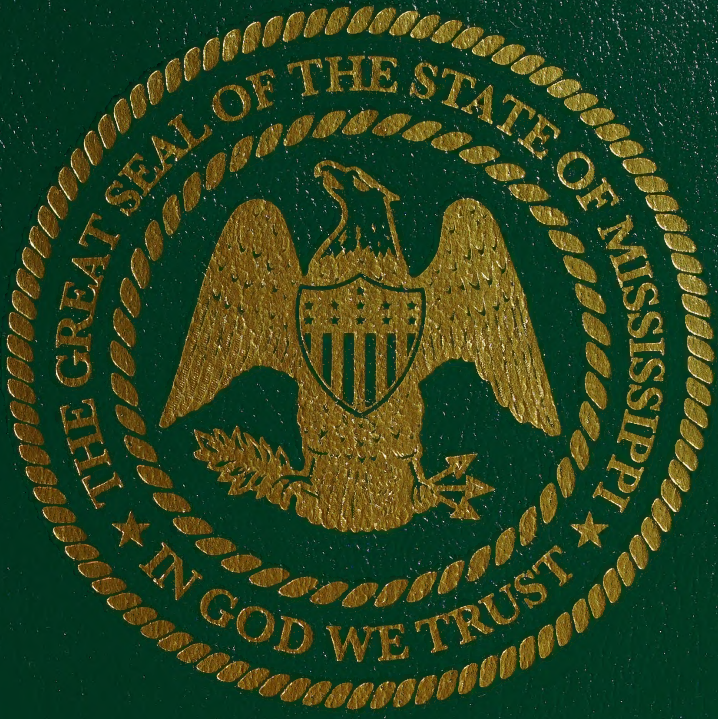

MISSISSIPPI CODE 1972

Annotated

Public Safety and Good Order

Prisons and Prisoners;
Probation and Parole

Titles 45 to 47

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME ELEVEN B

PUBLIC SAFETY AND GOOD ORDER PRISONS AND PRISONERS; PROBATION AND PAROLE

§§ 45-1-1 to 47-7-101

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2015 REGULAR SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This 2015 Replacement Volume 11B of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 2000 Replacement Volume 11A, the 2004 Replacement Volume 11B, and 2011 Replacement Volume 11B, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2011 Regular Legislative Session.

This volume contains the text of Titles 45 and 47, of the Mississippi Code of 1972 Annotated, as amended through the 2015 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

September 2015 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
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— Joint Legislative Committee Notes
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— Research and Practice References
— Source Notes
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— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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§ 45-1-1. Repealed.

Repealed by Laws, 1990, ch. 522, § 38, eff from and after July 1, 1990.

[Codes, 1942, §§ 8078, 8084, 8121; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 1; Laws, 1946, ch. 420, § 1; Laws, 1948, ch. 343, § 1; Laws, 1950, ch. 404; Laws, 1952, ch. 356; Laws, 1958, ch. 320; Laws, 1966, ch. 445, § 33; ch. 569, § 1]

Editor's Note — Former § 45-1-1 provided for the appointment of a commissioner of public safety.

§ 45-1-2. Executive Director of Department of Public Safety to be commissioner; organization of department; Commissioner of Public Safety; statewide safety training officer.

(1) The Executive Director of the Department of Public Safety shall be the Commissioner of Public Safety.

(2) The Commissioner of Public Safety shall establish the organizational structure of the Department of Public Safety, which shall include the creation of any units necessary to implement the duties assigned to the department and consistent with specific requirements of law including, but not limited to:

(a) Office of Public Safety Planning;
(b) Office of Medical Examiner;
(c) Office of Mississippi Highway Safety Patrol;
(d) Office of Forensics Laboratories;
(e) Office of Law Enforcement Officers' Training Academy;
(f) Office of Support Services;
(g) Office of Narcotics, which shall be known as the Bureau of Narcotics; and
(h) Office of Homeland Security.

(3) The department shall be headed by a commissioner, who shall be appointed by and serve at the pleasure of the Governor. The appointment of the commissioner shall be made with the advice and consent of the Senate. The commissioner may assign to the appropriate offices such powers and duties as deemed appropriate to carry out the department's lawful functions.

(4) The commissioner of the department shall appoint heads of offices, who shall serve at the pleasure of the commissioner. The commissioner shall have the authority to organize the offices established by subsection (2) of this section as deemed appropriate to carry out the responsibilities of the department. The organization charts of the department shall be presented annually with the budget request of the Governor for review by the Legislature.

(5) The commissioner of the department shall appoint, from within the Department of Public Safety, a statewide safety training officer who shall serve at the pleasure of the commissioner and whose duty it shall be to perform public training for both law enforcement and private persons throughout the state concerning proper emergency response to the mentally ill, terroristic threats or acts, domestic conflict, other conflict resolution, and such other matters as the commissioner may direct.

SOURCES: Laws, 1989, ch. 544, § 58; Laws, 1990, ch. 522, § 26; Laws, 2000, ch. 492, § 1; Laws, 2001, ch. 524, § 1; Laws, 2004, ch. 595, § 20; Laws, 2015, ch. 452, § 5, eff from and after July 1, 2015.

Editor's Note — Laws of 2014, ch. 480, § 2, provides:

"SECTION 2. (1) The Department of Finance and Administration is authorized to partition, transfer and convey to the Mississippi Department of Public Safety, all of the rights, title and interest in certain real property and any improvements thereon located within the City of Hattiesburg, Forrest County, Mississippi, whereupon is currently situated the facility occupied by the Department of Public Safety and used as a District Substation.

"(2) The Department of Finance and Administration shall partition the existing parcel of real property, which now contains three (3) facilities, two (2) of which are maintained and operated by the Department of Finance and Administration Office of Capitol Facilities, and the remaining facility used for the purpose described in subsection (1) of this section. Upon partition of the property into two (2) parcels of property, the Department of Finance and Administration shall retain the portion thereof upon which is situated the facilities under its administration and used for its operation. The remaining parcel, as described in subsection (1) of this section, shall be transferred to the Department of Public Safety for its management, operations and maintenance. Such property being more particularly described as follows:

"A parcel of land located in the NE ¼ of the SE ¼ of Section 34, Township 4 North, Range 13 West, Forrest County, Mississippi, and being more particularly described as follows: Commence at a concrete marker found marking the NE corner of the said NE ¼ of the SE ¼, said point being on the southern right-of-way line of John Merl Tatum Industrial Drive; thence run North 89 degrees 52 minutes 40 seconds West along the north line of the said NE ¼ of the SE ¼ and along said southern right-of-way line for 111.62 feet to a crimp top pipe found, said point being the Point of Beginning; thence run South 00 degrees 14 minutes 28 seconds East for 456.18 feet to a crimp top pipe found; thence run South 89 degrees 33 minutes 01 seconds West for 341.44 feet to an iron pin found; thence run North 12 degrees 19 minutes 42 seconds West for 470.65 feet to an iron pin set on the said north line of the said NE ¼ of the SE ¼, said point also being on the said southern right-of-way line of said John Merl Tatum Industrial Drive; thence run South 89 degrees 52 minutes 40 seconds East along said north line and along said southern right-of-way line for 440.00 feet back to the Point of Beginning. Said parcel contains 4.11 acres, more or less.

"(3) The State of Mississippi shall retain all rights to minerals in the partitioned property transferred under subsection (1) of this section.

"(4) The Department of Finance and Administration is vested with the authority to correct any discrepancies in the legal description of the property described in subsection (2) of this section."

Laws of 2012, ch. 553, § 4 provides:

"SECTION 4. (1) The Department of Finance and Administration, acting on behalf of the Department of Public Safety, is authorized to transfer to the Board of Supervisors of Grenada County, Mississippi, certain real property that has been in the possession of and under the jurisdiction of the Department of Public Safety since 1942 which such deed was recorded on December 7, 1942, and upon which it currently operates a licensing station from a building located on the site, such property being more particularly described as follows:

"Being situated in the County of Grenada and the State of Mississippi, to wit:

"Lot 113 of Jackson Heights Subdivision of SE ¼ NE ¼ of NE ¼ SE ¼ of Section 19, Township 22 North, Range 5 East as same appears of record in Plat Book 1 at page 39 of the records of the Chancery Clerk's Office of said county.

"There is also granted with this deed a permit to place a guy pole or wire on Lot 107 of said subdivision with the distinct understanding that same will not interfere with any buildings now on said lot or to be erected on said lot.

"(2) The transfer of the real property described in subsection (1) of this section shall be contingent upon the County of Grenada entering into a written agreement with the Department of Public Safety to fund the construction of a new licensing station within the county.

"(3) The State of Mississippi shall retain all mineral rights to the real property transferred under this section."

Amendment Notes — The 2015 amendment substituted "Forensics" for "Crime" preceding "Laboratories" in (2)(d).

Cross References — General provisions regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 45-1-2 establishes organization of department of public safety; department is headed by commissioner of public safety, appointed by Governor; commissioner appoints six heads of offices who serve at will and pleasure of commissioner; and, commissioner is given great latitude in how to organize various offices. Head, Feb. 25, 1993, A.G. Op. #92-1007.

A municipal police department has concurrent jurisdiction with state security personnel over criminal activity that occurs on state-owned property located within the municipal boundaries, but since there is no authority which gives primary jurisdiction to one agency over another, a cooperative effort should be made on the part of all agencies with jurisdiction to evaluate each occurrence of criminal activity on an individual basis and make a decision as to who should have primary jurisdiction based on the circumstances of the incident and the resources of each investigating agency. Prichard, January 16, 1998, #98-0009.

§ 45-1-3. Rule-making power of commissioner.

When not otherwise specifically provided, the commissioner is authorized to make and promulgate reasonable rules and regulations to be coordinated, and carry out the general provisions of the Highway Safety Patrol and Driver's License Law of 1938.

SOURCES: Codes, 1942, § 8090; Laws, 1938, ch. 143.

Cross References — Highway Safety Patrol and Driver's License Law of 1938, see § 45-3-1 et seq. and 63-1-1 et seq.

Duty of commissioner to adopt a uniform system of traffic control devices, see § 63-3-301.

Department's authority to aid in establishment of education program for first offenders convicted of driving while intoxicated, see § 63-11-32.

§ 45-1-5. Employment of administrative, clerical and other employees.

The Commissioner of Public Safety is authorized and empowered to employ such administrative, professional, technical, stenographic, clerical and other employees as may be necessary to perform the duties of the Mississippi Highway Safety Patrol to comply with the provisions of the Mississippi Motor Vehicle Safety-Responsibility Law, being Chapter 15 of Title 63 of the Mississippi Code of 1972, and to perform the duties under all other laws required to be administered under the supervision of the commissioner. The commissioner shall fix the salaries of all such employees where such salaries are not otherwise fixed by law.

SOURCES: Codes, 1942, § 8085; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 331, § 1; Laws, 1946, ch. 420, § 6; Laws, 1948, ch. 343, § 4; Laws, 1950, ch. 407, § 3; Laws, 1952, ch. 357, § 2; Laws, 1956, ch. 377, § 2; Laws, 1993, ch. 508, § 12, eff from and after July 1, 1993.

Editor's Note — Laws of 1993, ch. 508, § 13, effective July 1, 1993, provides as follows:

"SECTION 13. It is the intent of the Legislature that the Department of Public Safety shall assist the Mississippi Agricultural and Livestock Theft Bureau [established in § 69-29-1] until such time as the Bureau is fully funded and operational."

JUDICIAL DECISIONS

1. In general.

Because of the pattern of past racial discrimination by the department of public safety in hiring non-sworn personnel, entrance examinations for such personnel were required to be validated and shown to be non-discriminatory; and the department was temporarily required to first hire every black applicant who met minimal requirements set by the court. Morrow v. Dillard, 412 F. Supp. 494 (S.D. Miss. 1976), rev'd on other grounds, 580 F.2d 1284 (5th Cir. 1978).

§ 45-1-6. Special contract agents authorized; powers; qualifications; form of contract; agents not considered employees of Mississippi Bureau of Investigation.

(1) The Director of the Mississippi Bureau of Investigation is authorized to retain on a contractual basis such persons as he shall deem necessary to detect and apprehend violators of the criminal statutes of this state.

(2) Those persons contracting with the Director of the Mississippi Bureau of Investigation pursuant to subsection (1) shall be known and hereinafter referred to as "special contract agents."

(3) The investigative services provided for in this section shall be designed to support local law enforcement efforts.

(4) Special contract investigators shall have all powers necessary and incidental to the fulfillment of their contractual obligations, including the power of arrest when authorized by the Director of the Mississippi Bureau of Investigation.

(5) No person shall be a special contract investigator unless he is at least twenty-one (21) years of age.

(6) The Director of the Mississippi Bureau of Investigation shall conduct a background investigation of all potential special contract investigators. All contract agents must meet the minimum standard requirements established by the Board on Law Enforcement Officer Standards and Training.

(7) Any contract pursuant to subsection (1) shall be:

(a) Reduced to writing; and

(b) Terminable upon written notice by either party, and shall in any event terminate one (1) year from the date of signing; and

(c) Approved as to form by the Attorney General.

Such contracts shall not be public records and shall not be available for inspection under the provisions of a law providing for the inspection of public records as now or hereafter amended.

(8) Special contract investigators shall not be considered employees of the Bureau of Investigation for any purpose.

(9) The Director of the Mississippi Bureau of Investigation shall have all powers necessary and incidental to the effective operation of this section.

(10) Notwithstanding any other provisions contained in this section, all contracts authorized under this section and related matters shall be made available to the Legislative Budget Office and the Department of Finance and Administration.

SOURCES: Laws, 2006, ch. 469, § 2, eff from and after July 1, 2006.

Cross References — Board on Law Enforcement Officer Standards and Training, see §§ 45-6-5 through 45-6-9.

§ 45-1-7. Legislators ineligible to serve.

No member of the Legislature shall be eligible to serve as an officer or employee or in any other capacity under the provisions of the Highway Safety Patrol and Driver's License Law of 1938.

SOURCES: Codes, 1942, § 8122; Laws, 1938, ch. 143.

§ 45-1-9. Repealed.

Repealed by Laws, 2006, ch. 326, § 1, effective from and after passage (approved March 9, 2006).

[Codes, 1942, § 8084; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1966, ch. 569, § 1, eff from and after passage (approved May 25, 1966).]

Editor's Note — Former § 45-1-9 provided that each highway patrolman and certain other appointees shall furnish a surety bond of not less than $2000.00 payable to the state and conditioned upon the faithful performance of duties.

Cross References — Highway Safety Patrol and Driver's License Law of 1930, see §§ 45-3-1 et seq. and 63-1-1 et seq.

§ 45-1-11. Salaries may be paid on semi-monthly basis.

The commissioner of public safety is hereby authorized and empowered, in his discretion and with the approval of the state auditor of public accounts, to pay members of the highway safety patrol and other employees of the department of public safety on a semi-monthly basis.

SOURCES: Codes, 1942, § 8085.5; Laws, 1966, ch. 506, § 1, eff from and after passage (approved June 11, 1966).

Editor's Note — Section 7-7-2 provides that the words “State Auditor of Public Accounts,” “State Auditor,” and “Auditor appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term “State Fiscal Officer” appears in any law it shall mean “Executive Director of the Department of Finance and Administration”.

§ 45-1-12. Salaries of certain officers of the Mississippi Highway Safety Patrol and the Mississippi Bureau of Narcotics [Effective January 1, 2016].

(1) The salaries of all officers of the Mississippi Highway Safety Patrol who have completed the course of instruction in an authorized highway patrol training school on general law enforcement, and are serving as a sworn officer of the Highway Patrol in the enforcement of the laws of the State of Mississippi, including service in the driver's license division and the sworn officers of the Mississippi Bureau of Narcotics, shall be determined and paid in accordance with the scale for officers salaries as provided in this subsection:

Department of Public Safety Sworn Officers Salary Schedule

2015-2016 Fiscal Year and Thereafter

Rank	**Years of Experience**			
	Less than 4	Over 4	Over 8	Over 12
Trooper	38,000			
Trooper FC		41,000		
Corporal			44,000	
Sergeant				47,000

Rank	**Years of Experience**			
	Over 16	Over 20	Over 24	Over 29
Staff Sgt	50,000			
Sr. Staff Sgt.		53,000		
Sgt. 1st Class		56,000	59,000	
Sergeant				47,000

Rank	**Years of Experience**					
	Over 5	Over 10	Over 15	Over 20	Over 25	Over 29
Master Sgt.	53,000	56,000	59,000	62,000	65,000	68,000

Rank	Years of Experience					
	Over 5	Over 10	Over 15	Over 20	Over 25	Over 29
Lieutenant	62,000	65,000	68,000	71,000	74,000	77,000
Captain		74,000	77,000	80,000	83,000	86,000
Major			86,000	89,000	92,000	95,000
Lt. Colonel			95,000	98,000	101,000	104,000
Colonel			112,000	112,000	112,000	112,000

Department of Public Safety/MS Bureau of Narcotics

Sworn Officers Salary Schedule

2015-2016 Fiscal Year and Thereafter

Rank	Years of Experience			
	Less than 4	Over 4	Over 8	Over 12
LE-Agent I	38,000			
LE-Agent II		41,000		
LE-Agent III			44,000	
LE-Agent IV				47,000

Rank	Years of Experience			
	Over 16	Over 20	Over 24	Over 29
LE-Agent V	50,000			
LE-Agent VI		53,000		

Rank	Years of Experience					
	Over 7	Over 12	Over 17	Over 22	Over 27	Over 32
Lieutenant	62,000	65,000	68,000	71,000	74,000	77,000
Captain		74,000	77,000	80,000	83,000	86,000
Major			86,000	89,000	92,000	95,000
Lt. Colonel			95,000	98,000	101,000	104,000
Colonel			112,000	112,000	112,000	112,000

(2) All sworn officers in the Mississippi Highway Patrol and the Mississippi Bureau of Narcotics employed on a full-time basis shall be paid a salary in accordance with the above scale. The rank and years of experience of each sworn officer to be used in establishing the salary shall be determined by the rank and years of experience on July 1 of the current fiscal year.

(3) For purposes of applying the rank designation to the above scale, the following job classifications of the State Personnel Board shall be applicable for the Mississippi Highway Patrol:

Rank	Job Classes
(a) Trooper	DPS-Highway Patrol Officer I LE-Investigator II
(b) Trooper First Class	DPS-Highway Patrol Officer II LE-Investigator III
(c) Corporal	DPS-Highway Patrol Officer III LE-Investigator IV

(d) Sergeant	DPS-Highway Patrol Officer IV LE-Investigator V
(e) Staff Sergeant	DPS-Highway Patrol Officer V
(f) Senior Staff Sergeant	DPS-Highway Patrol Officer VI Tech Spec
(g) Master Sgt/Sgt. F/C	DPS-Assistant Inspector DPS-Highway Patrol Officer VII DPS-Investigator I DPS-Supv. Driver Serv.
(h) Lieutenant	DPS-Air Operations Officer DPS-Dir. Corr. Intelligence DPS-Dist. Executive Officer DPS-Regional Supv. Driver. Serv. DPS-Branch Director LE-Dir/Training LE-Dist. Investigator
(i) Captain	DPS-Staff Officer (MHP)
(j) Major	DPS-Bureau Director II
(k) Lt. Colonel	DPS-Deputy Administrator; DPS-Chief of Staff
(*l*) Colonel/Chief of Patrol	Dir-Office of MS Hwy Safety Patrol

(4) For purposes of applying the rank designation to the above scale, the following job classifications of the State Personnel Board shall be applicable for the Mississippi Bureau of Narcotics:

Rank	**Job Classes**
(a) Agents	LE-Agent I LE-Agent II LE-Agent III LE-Agent IV LE-Agent V LE-Agent VI
(b) Lieutenant	BN-District Investigator (LT)
(c) Captain	BN-District Commander
(d) Major	BN-Bureau Director II Office Director I
(e) Lt. Colonel	BN-Deputy Administrator
(f) Colonel	Director, Bureau of Narcotics

(5) In any fiscal year after July 1, 2015, in the event the Legislature provides across-the-board salary increases to state employees whose compensation is paid from the State General Fund and subject to specific appropriation therefor by the Legislature, the State Personnel Board shall revise the salary scale above to provide the same percentage or dollar amount increase as has been appropriated for other state employees.

(6) It shall be the duty of the Mississippi Department of Public Safety to file with the Legislative Budget Office and the State Fiscal Officer such data and information as may be required to enable the said Legislative Budget Office and State Fiscal Officer to budget and distribute the funds necessary to compensate the sworn officers of the Department of Public Safety according to the requirements of the salary scale. Such data and information so filed may be revised from time to time as necessitated to reflect the current number and experience of sworn officers employed by the department.

SOURCES: Laws, 2015, ch. 486, § 1, eff from and after Jan. 1, 2016.

§ 45-1-13. Use of employees in other divisions.

Notwithstanding the provisions of Sections 45-1-1, 45-1-5, 45-1-17, 45-3-7 through 45-3-9, 63-1-13, 63-1-15, and 63-1-45 through 63-1-49, Mississippi Code of 1972, designating or specifying the division or department in which any employee shall be employed and the duties which such employee shall perform, the commissioner shall have full power and authority, in his discretion, to place and use any employees in any other division or department and to require such employees to perform and discharge duties arising under the Highway Safety Patrol and Driver's License Law of 1938.

SOURCES: Codes, 1942, § 8119.5; Laws, 1948, ch. 343, § 8.

Editor's Note — Section 45-1-1, referred to in this section, was repealed by Laws, 1990, ch. 522, § 38, eff from and after July 1, 1990.

Cross References — Highway Safety Patrol and Driver's License Law of 1930, see §§ 45-3-1 et seq. and 63-1-1 et seq.

§ 45-1-15. Purchase of workers' compensation insurance.

The Department of Public Safety shall purchase workmen's compensation insurance with coverage for all patrolmen and other personnel employed by the commissioner, as authorized by law. All personnel shall be entitled to the benefits prescribed by Sections 71-3-1 through 71-3-111, Mississippi Code of 1972, cited as the "Workmen's Compensation Law."

SOURCES: Codes, 1942, § 8085; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 331, § 1; Laws, 1946, ch. 420, § 6; Laws, 1948, ch. 343, § 4; Laws, 1950, ch. 407, § 3; Laws, 1952, ch. 357, § 2; Laws, 1956, ch. 377, § 2; eff July 1, 1956.

Editor's Note — Pursuant to § 71-3-1, the title of the Workmen's Compensation Law is changed to "Workers' Compensation Law" and the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission".

§ 45-1-17. Crime detection and medical examiner laboratory.

The commissioner shall have the authority to establish, staff, equip and operate a crime detection and medical examiner laboratory, and to cooperate with the University Medical Center and other hospitals and laboratories in its operation.

SOURCES: Codes, 1942, § 8085; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 331, § 1; Laws, 1946, ch. 420, § 6; Laws, 1948, ch. 343, § 4; Laws, 1950, ch. 407, § 3; Laws, 1952, ch. 357, § 2; Laws, 1956, ch. 377, § 2; eff July 1, 1956.

Editor's Note — Laws of 2015, ch. 452, § 21, provides:

"SECTION 21. The Mississippi Forensics Laboratory shall continue to use stationery and other supplies bearing the designation of "Mississippi Crime Laboratory" until depleted, and the name affixed on a building or property shall remain until replacement due to normal wear or other cause."

Cross References — Duty of the State Medical Examiner to cooperate with the crime detection and medical examiner laboratories authorized by this section, see § 41-61-63.

Director of crime laboratory, see §§ 45-1-25, 45-1-27.

Funding of crime laboratory, see § 45-1-29.

Purchasing of vehicles and equipment by crime laboratory, see § 45-1-31.

Duties of the state crime laboratory with respect to administration of the Implied Consent Law, see §§ 63-11-5 et seq.

Right of person given chemical test under Implied Consent Law to have additional test approved by state crime laboratory administered by person of his choice, see § 63-11-13.

Approval by state crime laboratory and commissioner of public safety of methods of administering chemical tests under Implied Consent Law, see § 63-11-19.

JUDICIAL DECISIONS

1. In general.

Crime laboratory established by Commissioner of Public Safety pursuant to § 45-1-17 is "court-approved laboratory" for purposes of § 13-1-114 [repealed]. Barnette v. State, 481 So. 2d 788 (Miss. 1985).

RESEARCH REFERENCES

ALR. Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases. 83 A.L.R.4th 629.

Admissibility of expert opinion stating whether a particular knife was, or could have been, the weapon used in a crime. 83 A.L.R.4th 660.

§ 45-1-19. Repealed.

Repealed by its own terms from and after July 1, 1993.

[Codes, 1942, § 8084; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1966, ch. 569, § 1; repealed, Laws, 1984, ch. 495, § 39; reenacted and amended, Laws, 1985, ch. 474, § 39; Laws, 1986, ch. 438, § 31; Laws, 1987, ch.

483, § 32; Laws, 1988, ch. 442, § 29; Laws, 1989, ch. 537, § 28; Laws, 1990, ch. 518, § 29; Laws, 1991, ch. 618, § 28; Laws, 1992, ch. 491 § 30]

Editor's Note — Former § 45-1-19 directed the commissioner to carry insurance on motor vehicles, and waived the immunity of the department to extent of insurance.

§ 45-1-21. Department of Public Safety authorized to charge fees for services and reports.

(1)(a) The Mississippi Department of Public Safety being required by law to keep various records and perform various services and being authorized to furnish certain records and services, the department, by direction of the Commissioner of Public Safety, shall establish and collect for such services a proper fee, commensurate with the service rendered and the cost of the service for the furnishing of any record or abstract thereof in the Department of Public Safety now or which may hereafter be required by law to be kept by said department, any photograph or photo copy or any report of any kind authorized by law, including services for polygraph tests and reports thereof.

(b) No records shall be furnished by the Mississippi Department of Public Safety which are classified as confidential by law. All fees collected under this section shall be paid into the General Fund of the State Treasury in accordance with the provisions of Section 45-1-23(2).

(2)(a)(i) The Commissioner of Public Safety, by rule duly filed with the Secretary of State under the Administrative Procedures Act, may establish a card stock fee to be paid by an applicant when specifically authorized by statute for producing a license, permit or identification card bearing the likeness of the applicant. The card stock fee shall be the actual cost of producing the license, permit or identification card as set by contract rounded off to the next highest dollar.

(ii) The administrative rule filing shall include either:

1. A copy of the contract governing the actual cost of producing the license permit or identification card, from which nonpublic information may be redacted; or

2. An abstract of the pertinent parts of the contract verified to be correct by the person responsible for the administrative rule filing.

(b) Monies collected for the card stock fee shall be deposited into a special card stock fee account which the Department of Public Safety shall use to pay the actual cost of producing the licenses and identification cards. Any monies collected in excess of the actual costs of the card stock fee may be used by the department to defray the cost of future photography, fraud deterrence and driver's license technology initiatives. Money remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund and any interest earned from the investment of monies in the fund shall be deposited to the credit of the fund.

SOURCES: Codes, 1942, § 8120-7; Laws, 1962, ch. 513; Laws, 1976, ch. 396, § 3; Laws, 1991, ch. 356 § 1; Laws, 2014, ch. 424, § 1, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment deleted the third undesignated paragraph regarding monies deposited to the Department of Public Safety Administrative Fund, added (1) designation and (2); and substituted "the" for "said" and "the" for "such" in present (1)(a).

Cross References — Administrative Procedure Act, see §§ 25-43-1.101 et seq.

JUDICIAL DECISIONS

1. In general.

In an action by the state executive committee of a political party against the state commissioner for public safety in connection with a dispute over the proper fee for access to the complete drivers license records of the state, under §§ 25-61-7 and 45-1-21, the amount of the fee to be commensurate with the actual cost to the state of providing the copies of those records. Roberts v. Mississippi Republican Party State Executive Comm., 465 So. 2d 1050 (Miss. 1985).

Political party provided with access to drivers license records may be charged only for actual cost of providing copies of records. Roberts v. Mississippi Republican Party State Executive Comm., 465 So. 2d 1050 (Miss. 1985).

In dispute over reasonableness of fee charged for providing drivers license records to political party, both § 25-61-7 and § 45-1-21 must be given effect since there is no express repeal of § 45-1-21 and no irreconcilable conflict between statutes. Roberts v. Mississippi Republican Party State Executive Comm., 465 So. 2d 1050 (Miss. 1985).

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutory provisions relating to public access to police records. 82 A.L.R.3d 19.

§ 45-1-23. Payment of expenses of operating and administering department; budget; disposition of funds received.

(1) The expenses of operating and administering the department of public safety, including the highway safety patrol, the bureau of investigation, and the safety responsibility bureau, shall be paid from monies appropriated for such purposes by the Mississippi Legislature.

The department of public safety shall comply with all the applicable provisions of Chapter 103, Title 27, Mississippi Code of 1972, being the state budget and accounting act.

(2) All funds received by the department of public safety and any bureau, department or division thereof shall be paid into the state treasury on the same day in which said funds are collected. The state auditor of public accounts may require the commissioner to adopt standard accounting procedures acceptable to the auditor for the handling of such sums.

SOURCES: Codes, 1942, §§ 8120.5, 8120.7; Laws, 1956, ch. 378, § 6; Laws, 1958, ch. 500; Laws, 1962, ch. 513; ch. 518, §§ 1, 2; Laws, 1970, ch. 525, § 1; ch. 524,

§ 1; Laws, 1976, ch. 396, § 4; Laws, 1984, ch. 478, § 28, eff from and after July 1, 1984.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides in part:

"SECTION 3. When used in [this section] . . . requirements that funds be deposited on the same day 'collected' shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, effective from and after July 1, 1984, provides as follows:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Cross References — Fees for drivers' licenses, see § 63-1-45.

Fee for reinstatement of license subsequent to suspension, revocation or cancellation, see § 63-1-46.

§ 45-1-25. Director of Mississippi Forensics Laboratory; qualifications; removal.

The Director of the Mississippi Forensics Laboratory which has been established by the Commissioner of Public Safety under the authority of Section 45-1-17 shall be a person who is experienced in forensics laboratory operations, knowledgeable of the criminal justice system, and who shall have the following minimum qualifications:

(a) Graduation from an accredited four-year college or university with major course work in forensic science, chemistry, biology, commercial science or physics.

(b) At least five (5) years' full-time employment in a forensics laboratory, with supervisory or administrative responsibility.

(c) Thorough knowledge of the utilization of forensics laboratory services and their relation to the investigating law enforcement officers.

(d) Thorough knowledge of techniques employed in processing of physical evidence.

(e) Membership in professional organizations promoting advancement of forensic science.

(f) Proven effectiveness as a manager and administrator.

Unusual strength in one or more of the above qualifications may compensate for failure to exactly satisfy paragraph (b) of this section.

The Director of the Forensics Laboratory may only be removed by the Commissioner of Public Safety upon proof of his inability to serve due to illness, administrative or managerial ineffectiveness, incompetence, malfeasance, dereliction of duty or moral turpitude.

SOURCES: Laws, 1979, ch. 455, § 1; Laws, 1984, ch. 384; Laws, 2015, ch. 452, § 6, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment substituted "Forensics Laboratory" and "forensics laboratory" for "Crime Laboratory" and "crime laboratory" throughout the section.

RESEARCH REFERENCES

ALR. Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases. 83 A.L.R.4th 629.

Admissibility of expert opinion stating whether a particular knife was, or could have been, the weapon used in a crime. 83 A.L.R.4th 660.

§ 45-1-27. Director of Crime Laboratory; responsibilities and duties.

The director shall have responsibilities and duties including but not limited to the following:

(a) To plan and give general direction to activities or programs for which he is responsible, through the issuance of directives and orders.

(b) To review proposed changes in policies affecting the operation of the division under his direction.

(c) To maintain liaison with other agencies, divisions or departments of state and federal government.

(d) To approve and maintain uniform procedures and standards of operation for the laboratory.

(e) To supervise and approve procedures and processing of physical evidence.

(f) To present testimony in court in analysis of physical evidence.

(g) To supervise the state medical examiner.

(h) To attend scientific conferences and hold classes for law enforcement officers.

(i) To present budget requests to the legislative budget office and to legislative committees.

SOURCES: Laws, 1979, ch. 455, § 2; Laws, 1984, ch. 343, § 2; Laws, 1984, ch. 488, § 213, eff from and after July 1, 1984.

Cross References — Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

State medical examiner, see §§ 41-61-51 et seq.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 45-1-27 establishes intent of legislature that medical examiner be supervised by director of crime laboratory and, to that degree, it does fix organizational structure of these two offices, at least in relationship to each other.

Head, Feb. 25, 1993, A.G. Op. #92-1007.

§ 45-1-29. Mississippi Forensics Laboratory; funding; fees for services.

(1) The Mississippi Forensics Laboratory shall be funded separately from the Department of Public Safety. Any appropriated funds shall be maintained in an account separate from any funds of the Department of Public Safety and shall never be commingled with any funds of the department. However, nothing in this section shall be construed to prohibit the utilization of the combined resources of the Mississippi Forensics Laboratory, the Division of Support Services of the Department of Public Safety or the Mississippi Justice Information Center to efficiently carry out the mission of the Department of Public Safety.

(2) Grants and donations to the Forensics Laboratory may be accepted from individuals, the federal government, firms, corporations, foundations and other interested organizations and societies.

(3) The Commissioner of Public Safety shall establish and the Division of Support Services of the Department of Public Safety shall collect for services rendered proper fees commensurate with the services rendered by the Forensics Laboratory. Those fees shall be deposited into a special fund in the State Treasury to the credit of the Forensics Laboratory and expended in accordance with applicable rules and regulations of the Department of Finance and Administration. Those fees may be used for any authorized expenditure of the Forensics Laboratory except expenditures for salaries, wages and fringe benefits.

(4) Upon every individual convicted of a felony, every individual who is nonadjudicated on a felony or misdemeanor case under Section 99-15-26, and every individual who participates in a pretrial intervention program established under Section 99-15-101 et seq., in a case where the Forensics Laboratory provided forensic science or laboratory services in connection with the case, the court shall impose and collect a separate laboratory analysis fee of Three Hundred Dollars ($300.00), in addition to any other assessments and costs imposed by statutory authority, unless the court finds that undue hardship would result by imposing the fee. All fees collected under this section shall be deposited into the special fund of the Forensics Laboratory created in subsection (3) of this section.

SOURCES: Laws, 1979, ch. 455, § 3; Laws, 1988, ch. 401; Laws, 2002, ch. 621, § 1; Laws, 2010, ch. 495, § 2; Laws, 2015, ch. 452, § 7, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment substituted “Forensics Laboratory” for “Crime Laboratory” throughout the section.

ATTORNEY GENERAL OPINIONS

When attempts at collection have been exhausted, the Mississippi Crime Laboratory may sue for unpaid fees from counties, municipalities, and task forces for services rendered. Younger, Jr., June 16, 2000, A.G. Op. #2000-0301.

The Mississippi Crime Lab may charge fees commensurate with the services rendered and such fees may be charged to the defendant upon conviction; however, should the defendant be found not guilty, the county would be responsible for paying the fees of the crime lab. Whether the fees are reasonable would be subject to the court's discretion. Sparks, May 23, 2003, A.G. Op. 03-0250.

§ 45-1-31. Mississippi Forensics Laboratory; vehicles and equipment.

(1) The Forensics Laboratory shall be empowered to purchase, equip and maintain vehicles, as authorized by law, and other conveyances for necessary business such as travel to court, crime scene assistance and consultation. The vehicles shall be independent of the vehicles purchased and operated by the department of public safety.

(2) Obsolete nonrepairable or salvageable equipment shall be sold, as provided by law, and the funds so derived shall go into the account of the Forensics Laboratory and be used to replace such equipment.

SOURCES: Laws, 1979, ch. 455, § 4; Laws, 2015, ch. 452, § 8, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment substituted "Forensics Laboratory" for "Crime Laboratory" both times it appears.

§ 45-1-33. Transfer of Office of Criminal Justice Planning and Juvenile Justice Advisory Committee.

The Office of Criminal Justice Planning, including the Juvenile Justice Advisory Committee, as constituted in the Governor's Office of Federal-State Programs on June 30, 1989, is hereby transferred to the Department of Public Safety.

SOURCES: Laws, 1990, ch. 522, § 36, eff from and after July 1, 1990.

§ 45-1-35. Department of Public Safety to provide state highway accident statistics to Department of Transportation.

The Department of Public Safety shall provide each month to the Mississippi Department of Transportation accident statistics for accidents involving motor vehicles which occur on the designated state highway system. Information provided to the transportation department shall include at least the following:

(a) The date of the accident and time of day (if known);
(b) The location of the accident;
(c) The cause of the accident (if known);

(d) The number of vehicles involved; and
(e) Injuries and fatalities resulting from the accident.

SOURCES: Laws, 1994, ch. 380, § 1, eff from and after July 1, 1994.

§ 45-1-37. Commissioner authorized to enter into reciprocal agreements with bordering states for purpose of entering such state to make arrest; commissioner to require Department of Public Safety to enter into Memorandum of Understanding with county registrars for purpose of providing Mississippi Voter Identification Card.

(1) The Commissioner of Public Safety is hereby authorized and directed to seek reciprocal agreements with bordering states to allow law enforcement officers of the State of Mississippi to enter into such bordering states while in pursuit of persons who have committed crimes for the purpose of apprehending and arresting such persons. Any state who enters into such reciprocal agreement shall be authorized to enter into the State of Mississippi for the same purpose.

(2) The Commissioner of Public Safety shall require the Department of Public Safety to enter into a Memorandum of Understanding, which is negotiated by the Secretary of State, with the registrar of each county for the purpose of providing a Mississippi Voter Identification Card.

SOURCES: Laws, 2000, ch. 339, § 1; Laws, 2012, ch. 526, § 9, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — The effective date of the bill that amended this section, House Bill No. 921, 2012 Regular Session, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of Shelby County v. Holder (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the Shelby County decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. House Bill No. 921 was submitted to the United States Attorney General before the Shelby County decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of House Bill No. 921 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of House Bill No. 921, so House Bill No. 921 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

Comparable Laws from other States — Arkansas: A.C.A. §§ 16-81-401 et seq.
Louisiana: La. C.Cr.P. Art. 231
Tennessee: Tenn. Code Ann. §§ 40-7-201 et seq.

§ 45-1-39. Repealed.

Repealed by its own terms effective June 30, 2007.

§ 45-1-39. [Laws, 2000, ch. 513, § 1; Laws, 2002, ch. 374, § 1; Laws, 2005, ch. 352, § 1, eff from and after passage (approved Mar. 14, 2005.)]

Editor's Note — Former § 45-1-39 created the Municipal Crime Prevention Fund.

§ 45-1-41. Disposition of seized property after notice to any known owner or lienholder.

(1) Any property received, recovered or seized by the Department of Public Safety which is not forfeited or disposed of by court order may be released to the owner of or lienholder on the property upon receipt of payment for all storage and towing charges incurred by the Department of Public Safety.

(2) The Department of Public Safety shall notify in writing, by United States certified mail, the owner or lienholder of the property at the owner's or lienholder's last known address that the owner or lienholder may retrieve the property. In the event that the owner or lienholder does not claim the property within thirty (30) days from the date of the receipt of the notice, the property is declared forfeited to the Department of Public Safety.

(3) In the event the notice by mail is returned undelivered, the department shall cause to be made further search and inquiry to ascertain the reputed owner's or lienholder's street and post office address. If a new or additional address is ascertained, the department shall again issue notice. If a new or additional address is not ascertained, or if notice is again returned undelivered, the department shall cause an affidavit to be prepared to that effect which shall specify the acts of search and inquiry made in the effort to ascertain the owner's or lienholder's address. The affidavit shall be retained by the department for three (3) years. Upon the making of the affidavit, the property is declared forfeited to the Department of Public Safety.

SOURCES: Laws, 2002, ch. 324, § 1, eff from and after July 1, 2002.

Cross References — Forfeitures under the Uniform Controlled Substances Law, see §§ 41-29-153 and 41-29-176.

Procedure for disposition of seized property under the Uniform Controlled Substances Law, see §§ 41-29-154 and 41-29-177 through 41-29-185.

Disposition of proceeds of sale of forfeited weapons, generally, see § 45-9-151.

§ 45-1-43. Emergency response and vehicular pursuit policies; state, county and local mandate; training procedures; sanctions for failure to adopt.

On or after January 1, 2005, each state, county and local law enforcement agency that conducts emergency response and vehicular pursuits shall adopt written policies and training procedures that set forth the manner in which these operations shall be conducted. Each law enforcement agency may create their own such policies or adopt an existing model. All pursuit policies created or adopted by any law enforcement agency must address situations in which police pursuits cross over into other jurisdictions. Law enforcement agencies which do not comply with the requirements of this provision are subject to the withholding of any state funding or state administered federal funding.

SOURCES: Laws, 2004, ch. 487, § 2, eff from and after July 1, 2004.

§ 45-1-45. Implementation of Internet-based data and information sharing network for exchange and viewing of certain felony and misdemeanor information; Information Exchange Network Fund created.

(1) The Department of Public Safety shall implement an Internet-based data and information sharing network that will allow state and local law enforcement, court personnel, prosecutors and other agencies to exchange and view felony and misdemeanor information on current and former criminal offenders through a currently available, near real-time, updated hourly, nationwide jail database which represents fifty percent (50%) or more of all incarcerated persons in the country.

(2) There is created in the State Treasury a special fund to be known as the Information Exchange Network Fund. The purpose of the fund shall be to provide funding for the Web-based information sharing network required by subsection (1) of this section. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Department of Public Safety. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature;
(b) The interest accruing to the fund;
(c) Monies received under the provisions of Section 99-19-73;
(d) Monies received from the federal government;
(e) Donations; and
(f) Monies received from such other sources as may be provided by law.

SOURCES: Laws, 2009, ch. 535, § 2, eff from and after July 1, 2009.

§ 45-1-47. Department of Public Safety authorized to sell and replace as needed its fleet of aircraft; use of proceeds.

Notwithstanding any provision to the contrary that may be found in Section 61-13-1 et seq., the Department of Public Safety is hereby authorized to sell any or all of its fleet of aircraft and replace the same with aircraft more suited to the needs of the department. The proceeds from the sale of such aircraft shall be retained by the Department of Public Safety to be used by the department to offset the cost of replacement aircraft purchased by the department and shall not be transferred to the State General Fund. However, in the event there are any proceeds remaining after the purchase of the replacement aircraft, the department shall transfer the remaining amounts to the State General Fund. The department is authorized to escalate its budget to expend the proceeds from the sale of the aircraft in a manner consistent with authorization granted in this section.

SOURCES: Laws, 2013, ch. 547, § 2, eff from and after July 1, 2013.

CERTAIN PUBLIC SAFETY OFFICERS PERMITTED TO KEEP BADGES UPON RETIREMENT

Sec.	
45-1-71.	Full-time fire fighters and law enforcement officers permitted to keep badges upon retirement.

§ 45-1-71. Full-time fire fighters and law enforcement officers permitted to keep badges upon retirement.

Each full-time fire fighter, employed in accordance with Section 45-11-203, policeman, sheriff, deputy sheriff or other local law enforcement officer, who retires under Section 21-29-139 or the Public Employees' Retirement System, for superannuation or for reason of disability, or any other local government retirement system shall be allowed to retain, as his personal property, the one (1) badge which is issued to him by the local government fire fighting unit or law enforcement unit.

SOURCES: Laws, 2006, ch. 590, § 1, eff from and after July 1, 2006.

CERTIFICATION OF CERTAIN RETIRED LAW ENFORCEMENT OFFICERS TO CARRY CONCEALED WEAPON WITHOUT PERMIT

Sec.	
45-1-101.	Certain retired law enforcement officers may obtain certification from Mississippi Association of Chiefs of Police to carry concealed weapon without permit.

§ 45-1-101. Certain retired law enforcement officers may obtain certification from Mississippi Association of Chiefs of Police to carry concealed weapon without permit.

(1) This section may be referred to as the "HR218 Qualification Law."

(2) Any retired law enforcement officer who resides in this state and for whom the law enforcement agency from which the officer retired does not participate in the necessary certification for the retired officer to be certified according to the Law Enforcement Officers Safety Act of 2004 found at Title 18, Chapter 44, Section 926B, USC, or who does not reside in convenient proximity to the law enforcement agency from which the officer retired, may obtain the necessary certification from the Mississippi Association of Chiefs of Police.

SOURCES: Laws, 2010, ch. 480, § 1, eff from and after July 1, 2010.

Federal Aspects — Law Enforcement Officers Safety Act of 2004, see 18 USCS § 926B

BLUE ALERT SYSTEM

SEC.
45-1-151. Blue alert program established; definitions; activation; termination of activation.

§ 45-1-151. Blue alert program established; definitions; activation; termination of activation.

(1) There is established a statewide alert system known as "Blue Alert" which shall be developed and implemented by the Bureau of Investigation of the Department of Public Safety.

(2) As used in this section, unless the context requires a different definition, the following terms shall have the following meanings:

(a) "Law enforcement agency" means a law enforcement agency with jurisdiction over the search for a suspect in a case involving the death or serious injury of a peace officer.

(b) "Peace Officer" means a law enforcement officer as defined in Section 45-6-3.

(c) "Director" means the director of the Bureau of Investigation.

(3) The "Blue Alert" system may be activated when a suspect for a crime involving the death or serious injury of a peace officer has not been apprehended, and law enforcement personnel have determined that the suspect may be a serious threat to the public.

(4) Upon notification by a law enforcement agency that a suspect in a case involving the death or serious injury of a peace officer has not been apprehended and may be a serious threat to the public, the director shall activate the "Blue Alert" system and notify appropriate participants in the "Blue Alert" system, as established by rule, if:

(a) A law enforcement agency believes that a suspect has not been apprehended;

(b) A law enforcement agency believes that the suspect may be a serious threat to the public; and

(c) Sufficient information is available to disseminate to the public that could assist in locating the suspect.

The area of the alert may be less than statewide if the director determines that the nature of the event makes it probable that the suspect did not leave a certain geographic location.

(5) Before requesting activation of the "Blue Alert" system, a law enforcement agency shall verify that the criteria described by this section have been satisfied. The law enforcement agency shall assess the appropriate boundaries of the alert based on the nature of the suspect and the circumstances surrounding the crime.

(6) The director shall terminate any activation of the "Blue Alert" system with respect to a particular suspect if:

(a) The suspect is located or the incident is otherwise resolved; or

(b) The director determines that the "Blue Alert" system is no longer an effective tool for locating the suspect.

(7) Any entity or individual involved in the dissemination of a "Blue Alert" generated pursuant to this section shall not be liable for any civil damages arising from that dissemination.

SOURCES: Laws, 2011, ch. 368, § 1, eff from and after July 1, 2011.

CHAPTER 2

Law Enforcement Officers and Fire Fighters Death and Disability Benefits Trust Funds

Article 1. Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund 45-2-1
Article 2. Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund 45-2-21
Article 3. Other Safety Officials Death Benefits Trust Fund 45-2-31

ARTICLE 1.

LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS DEATH BENEFITS TRUST FUND.

SEC.
45-2-1. Definitions; establishment of death benefits trust fund; payments from fund; administration of fund.

§ 45-2-1. Definitions; establishment of death benefits trust fund; payments from fund; administration of fund.

(1) Whenever used in this section, the term:

(a) "Covered individual" means a law enforcement officer or firefighter, including volunteer firefighters, as defined in this section when employed by an employer as defined in this section; it does not include employees of independent contractors.

(b) "Employer" means a state board, commission, department, division, bureau or agency, or a county, municipality or other political subdivision of the state, which employs, appoints or otherwise engages the services of covered individuals.

(c) "Firefighter" means an individual who is trained for the prevention and control of loss of life and property from fire or other emergencies, who is assigned to fire-fighting activity, and is required to respond to alarms and perform emergency actions at the location of a fire, hazardous materials or other emergency incident.

(d) "Law enforcement officer" means any lawfully sworn officer or employee of the state or any political subdivision of the state whose duties require the officer or employee to investigate, pursue, apprehend, arrest, transport or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime, whether the officer is on regular duty on full-time status, an auxiliary or reserve officer, or is serving on a temporary or part-time status.

(2)(a) The Department of Public Safety shall make a payment, as provided in this section, in the amount of One Hundred Thousand Dollars ($100,000.00) when a covered individual, while engaged in the performance of the person's official duties, is accidentally or intentionally killed or receives accidental or intentional bodily injury that results in the loss of the covered individual's life, provided that the killing is not the result of suicide and that the bodily injury is not intentionally self-inflicted.

(b) The payment provided for in this subsection shall be made to the beneficiary who was designated in writing by the covered individual, signed by the covered individual and delivered to the employer during the covered individual's lifetime. If no such designation is made, then the payment shall be made to the surviving child or children and spouse in equal portions, and if there is no surviving child or spouse, then to the parent or parents. If a beneficiary is not designated and there is no surviving child, spouse or parent, then the payment shall be made to the covered individual's estate.

(c) The payment made in this subsection is in addition to any workers' compensation or pension benefits and is exempt from the claims and demands of creditors of the covered individual.

(3)(a) There is established in the State Treasury a special fund to be known as the Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund. The trust fund shall be funded by an initial appropriation of Two Hundred Thousand Dollars ($200,000.00), and shall be comprised of any additional funds made available by the Legislature or by donation, contribution, gift or any other source.

(b) The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the funds of the Public Employees' Retirement System under Section 25-11-121, and those investments shall be subject to the limitations prescribed by Section 25-11-121.

(c) Unexpended amounts remaining in the trust fund at the end of the state fiscal year shall not lapse into the State General Fund, and any income earned on amounts in the trust fund shall be deposited to the credit of the trust fund.

(4) The Department of Public Safety shall be responsible for the management of the trust fund and the disbursement of death benefits authorized under this section. The Department of Public Safety shall adopt rules and regulations necessary to implement and standardize the payment of death benefits under this section, to administer the trust fund created by this section and to carry out the purposes of this section.

SOURCES: Laws, 1999, ch. 500, § 1; Laws, 2001, ch. 507, § 1; Laws, 2002, ch. 355, § 1; Laws, 2004, ch. 410, § 2; Laws, 2007, ch. 429, § 1; Laws, 2013, ch. 385, § 4; Laws, 2014, ch. 437, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 2007, ch. 429, § 2, provides as follows:

"SECTION 2. This act shall take effect and be in force from and after August 1, 2006."

Laws of 2013, ch. 385, § 6, provides:

"This act shall take effect and be in force from and after its passage; volunteer fire departments shall have until July 1, 2013, to obtain and have approved the insurance policies or self-insurance reserves or combination thereof required for political subdivisions under the Tort Claims Act."

Amendment Notes — The 2014 amendment, in (2)(a), substituted "One Hundred Thousand Dollars ($100,000.00)" for "Sixty-five Thousand Dollars ($65,000.00)" and "covered individual" for "law enforcement officer"; deleted (2)(b); and redesignated remaining subsections accordingly.

Cross References — Death benefits under Firemen's and Policemen's Disability and Relief Funds, see §§ 21-29-145 and 21-29-147.

Transfer of funds from uninsured motorist identification fund to cover insufficient funds in law enforcement officers and fire fighters death benefits trust fund, see § 63-16-13.

ATTORNEY GENERAL OPINIONS

For the purposes of Section 45-2-1, weight enforcement officers employed by the Mississippi Department of Transportation are "law enforcement officers" and their beneficiaries would be eligible to receive the death benefits provided for by that statute. Brown, Jan. 17, 2003, A.G. Op. #03-0009.

ARTICLE 2.

LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS DISABILITY BENEFITS TRUST FUND.

SEC.
45-2-21. Definitions; establishment of disability benefits trust fund; payments from fund; administration of fund.

§ 45-2-21. Definitions; establishment of disability benefits trust fund; payments from fund; administration of fund.

(1) Whenever used in this section, the term:

(a) "Covered individual" means a law enforcement officer or firefighter, including volunteer firefighters, as defined in this section while actively engaged in protecting the lives and property of the citizens of this state when employed by an employer as defined in this section; it does not include employees of independent contractors.

(b) "Employer" means a state board, commission, department, division, bureau, or agency, or a county, municipality or other political subdivision of the state, which employs, appoints or otherwise engages the services of covered individuals.

(c) "Firefighter" means an individual who is trained for the prevention and control of loss of life and property from fire or other emergencies, who is assigned to fire-fighting activity, and is required to respond to alarms and perform emergency actions at the location of a fire, hazardous materials or other emergency incident.

(d) "Law enforcement officer" means any lawfully sworn officer or employee of the state or any political subdivision of the state whose duties require the officer or employee to investigate, pursue, apprehend, arrest, transport or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime.

(2)(a) The Attorney General's office shall make a monthly disability benefit payment equal to thirty-four percent (34%) of the covered individual's regular base salary at the time of injury when a covered individual, while engaged in the performance of the individual's official duties, is accidentally or intentionally injured in the line of duty as a direct result of a single incident. The benefit shall be payable for the period of time the covered individual is physically unable to perform the duties of the covered individual's employment, not to exceed twelve (12) total payments for any one (1) injury. Chronic or repetitive injury is not covered. Benefits made available under this section shall be in addition to any workers' compensation benefits and shall be limited to the difference between the amount of workers' compensation benefits and the amount of the covered individual's regular base salary. Compensation under this section shall not be awarded where a penal violation committed by the covered individual contributed to the disability or the injury was intentionally self-inflicted.

(b) Payments made under this subsection are exempt from the claims and demands of creditors of the covered individual.

(3)(a) There is established in the State Treasury a special fund to be known as the Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund. The trust fund shall be funded by any funds made available by the Legislature or by donation, contribution, gift or any other source.

(b) The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the funds of the Public Employees' Retirement System under Section 25-11-121, and those investments shall be subject to the limitations prescribed by Section 25-11-121.

(c) Unexpended amounts remaining in the trust fund at the end of the state fiscal year shall not lapse into the State General Fund, and any income earned on amounts in the trust fund shall be deposited to the credit of the trust fund.

(4) The Attorney General's office shall be responsible for the management of the trust fund and the disbursement of disability benefits authorized under this section. The Attorney General shall adopt rules and regulations necessary to implement and standardize the payment of disability benefits under this section, to administer the trust fund created by this section and to carry out the purposes of this section. The Attorney General's office may expend up to ten percent (10%) of the monies in the trust fund for the administration and management of the trust fund and carrying out the purposes of this section.

SOURCES: Laws, 2005, ch. 406, § 1; Laws, 2006, ch. 581, § 1; Laws, 2013, ch. 385, § 5, eff from and after passage (approved Mar. 20, 2013.)

Editor's Note — Laws of 2013, ch. 385, § 6, provides:

"This act shall take effect and be in force from and after its passage; volunteer fire departments shall have until July 1, 2013, to obtain and have approved the insurance policies or self-insurance reserves or combination thereof required for political subdivisions under the Tort Claims Act."

Cross References — Firemen's and Policemen's Disability and Relief Funds, see §§ 21-29-101 et seq.

ARTICLE 3.

OTHER SAFETY OFFICIALS DEATH BENEFITS TRUST FUND.

SEC.
45-2-31. Definitions; establishment of death benefits trust fund for directors and assistant directors of certain local emergency management organizations and coroners and deputy coroners; payments from fund; administration of fund.

§ 45-2-31. Definitions; establishment of death benefits trust fund for directors and assistant directors of certain local emergency management organizations and coroners and deputy coroners; payments from fund; administration of fund.

(1) As used in this section, the term "covered individual" means the directors and assistant directors of local emergency management organizations established under Section 33-15-17, and coroners and deputy coroners.

(2)(a) The Department of Public Safety shall make a payment, as provided in this section, in the amount of One Hundred Thousand Dollars ($100,000.00) when a covered individual, while engaged in the performance of the person's official duties, is accidentally or intentionally killed, provided that the killing is not the result of suicide and that the bodily injury is not intentionally self-inflicted.

(b) The payment provided for in this subsection shall be made to the beneficiary who was designated in writing by the covered individual during the covered individual's lifetime. If no such designation is made, then the payment shall be made to the surviving child or children and spouse in equal portions, and if there is no surviving child or spouse, then to the parent or parents. If a beneficiary is not designated and there is no surviving child, spouse or parent, then the payment shall be made to the covered individual's estate.

(c) The payment made in this subsection is in addition to any workers' compensation or pension benefits and is exempt from the claims and demands of creditors of the covered individual.

(3)(a) There is established in the State Treasury a special fund to be known as the "Other Safety Officials Death Benefits Trust Fund." The trust fund shall be funded by monies made available by the Legislature by appropriations as needed, or by donation, contribution, gift or any other source.

(b) The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the funds of the Public Employees' Retirement System under Section 25-11-121, and those investments shall be subject to the limitations prescribed by Section 25-11-121.

(c) Unexpended amounts remaining in the trust fund at the end of the state fiscal year shall not lapse into the State General Fund, and any income earned on amounts in the trust fund shall be deposited to the credit of the trust fund.

(4) The Department of Public Safety shall be responsible for the management of the trust fund and the disbursement of death benefits authorized under this section. The Department of Public Safety shall adopt rules and regulations necessary to implement and standardize the payment of death benefits under this section, to administer the trust fund created by this section and to carry out the purposes of this section.

SOURCES: Laws, 2015, ch. 467, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (1) by substituting "Section 33-15-17" for "Section 33-315-17." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Editor's Note — Laws of 2015, ch. 467, § 2, effective July 1, 2015, provides: "SECTION 2. Section 1 of this act shall be codified as a new Article 3 in Chapter 2, Title 45, Mississippi Code of 1972."

CHAPTER 3

Highway Safety Patrol

Sec.

45-3-1. Citation of chapter.
45-3-3. Definitions.
45-3-5. Chief of patrol.
45-3-7. Organization of Highway Safety Patrol; compensation of members.
45-3-9. Qualifications of members of Highway Safety Patrol; agents of Mississippi Bureau of Narcotics employed as enforcement troopers.
45-3-11. Prohibitions as to engaging in political activity and soliciting campaign contributions.
45-3-13. No exemption from military service for patrolmen.
45-3-15. Preference to returning veterans.
45-3-17. Dismissal of patrolmen.
45-3-19. Regulations governing discipline, uniforms, supplies, and the like.
45-3-21. Powers and duties of patrol, generally.
45-3-23. Commissioner not to impose rule which impedes enforcement of traffic laws.
45-3-25. Patrolman preferring traffic charge to forward abstract of court record.
45-3-27. Bearing of arms; compliance with dress regulations.
45-3-29. Penalty for impersonating patrolman; exception for county patrolman; exception for retired patrolman with prior authorization from commissioner.
45-3-31. Uniforms, automobiles and other equipment.
45-3-33. Uniforms, automobiles and other equipment; advertising for bids.
45-3-35. Camera equipment for patrol cars.
45-3-37. Markings on patrol cars.
45-3-39. Prohibition as to personal use of cars, materials and equipment.
45-3-41. Radio receiving sets may be installed in certain counties and municipalities.
45-3-43. Radio substations and booster stations for use of highway safety patrol.
45-3-45. Training school for patrolmen.
45-3-47. Training school for patrolmen; selection program.
45-3-49. Penalty for violating provisions of chapter.
45-3-51. Retirants or beneficiaries of officers killed in line of duty permitted to retain one sidearm.
45-3-52. Retention by officers of assigned dogs retired from service.
45-3-53. Distinctive marker on cemetery memorials for Highway Safety Patrol officers killed in line of duty; markers for other officers.
45-3-55. Mississippi Highway Patrol Troop "D" substation named "Robert 'Bunky' Huggins Substation."
45-3-57. Mississippi Department of Public Safety's Highway Patrol District Office designated "Charles L. Young, Sr., District Office."

§ 45-3-1. Citation of chapter.

This chapter and Article 1, Chapter 1, Title 63, Mississippi Code of 1972, may be cited as the Highway Safety Patrol and Driver's License Law of 1938.

SOURCES: Codes, 1942, § 8076; Laws, 1938, ch. 143.

§ 45-3-3. Definitions.

The following words when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section:

(a) The term "commissioner" means the commissioner of public safety of this state;

(b) The term "highway" means every way or place of whatever nature open to the use of the public for the purpose of vehicular travel, and shall include streets of municipalities.

SOURCES: Codes, 1942, § 8077; Laws, 1938, ch. 143.

§ 45-3-5. Chief of patrol.

The commissioner is empowered and authorized to appoint an Assistant Commissioner of Public Safety to be known as the chief of patrol, who shall have the qualifications set forth in Section 45-3-9, and shall have charge of the division of operations of the patrol. The annual salary of the chief of patrol shall be fixed by the Legislature, payable monthly. He shall execute a bond in the penal sum of Five Thousand Dollars ($5,000.00) with a surety company authorized to do business in this state, the bond to be conditioned for the faithful performance of his duties. The bond shall be subject to the approval of the commissioner.

SOURCES: Codes, 1942, § 8078; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 1; Laws, 1946, ch. 420, § 1; Laws, 1948, ch. 343, § 1; Laws, 1950, ch. 404; Laws, 1952, ch. 356; Laws, 1958, ch. 320; Laws, 1966, ch. 445, § 33; Laws, 2011, ch. 503, § 2, eff from and after passage (approved Apr. 26, 2011.)

§ 45-3-7. Organization of Highway Safety Patrol; compensation of members.

(1) The commissioner is authorized to employ not exceeding six hundred fifty (650) persons as a Mississippi Highway Safety Patrol within the Department of Public Safety. All positions and salaries heretofore authorized and set by statute under the commissioner shall after April 20, 1981, be made part of the State Personnel System and shall be governed by the laws, rules and regulations thereof.

(2) The commissioner shall grant an additional One Hundred Dollars ($100.00) per month for special flying assignments to patrol officers who are licensed commercial pilots.

(3) It is the direction of the Legislature that all Fair Labor Standards Act (FLSA) nonexempt sworn officers of the Mississippi Highway Safety Patrol who are working one hundred seventy-one (171) hours in a twenty-eight-day work cycle be compensated based on the annual salary established by the State Personnel Board for a one-hundred-sixty-hour per month schedule divided by two thousand eighty-seven and one hundred forty-three one thousandths (2,087.143), for an hourly rate, to be multiplied by two thousand two hundred

twenty-three (2,223) or one hundred seventy-one (171) hours in a twenty-eight-day work cycle for a new annual salary. All hours worked over one hundred seventy-one (171) hours in a twenty-eight-day schedule shall be governed by the FLSA or other special compensation plan. All realignments after July 1, 2010, shall be calculated using this formula. This subsection shall be known as the "David R. Huggins Act."

SOURCES: Codes, 1942, § 8079; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 1; Laws, 1946, ch. 420, § 2; Laws, 1948, ch. 343, § 2; Laws, 1950, ch. 407, § 1; Laws, 1952, ch. 357, § 1; Laws, 1956, ch. 377, § 1; Laws, 1960, ch. 338, § 1; Laws, 1962, ch. 515; Laws, 1964, ch. 324, § 9; Laws, 1966, ch. 568, § 1; Laws, 1968, ch. 472, § 1; Laws, 1970, ch. 482; Laws, 1971, ch. 518, § 1; Laws, 1972, ch. 527, § 1; Laws, 1973, ch. 485, § 1; Laws, 1974, ch. 488; Laws, 1981, ch. 511, § 1; Laws, 1994, ch. 339, § 1; Laws, 2002, ch. 326, § 1; Laws, 2010, ch. 551, § 1, eff from and after July 1, 2010.

Cross References — State personnel system, generally, see §§ 25-9-101 et seq.

Highway safety patrol retirement system, see §§ 25-13-1 et seq.

Power of counties to employ men to enforce road laws, see § 45-7-1.

Federal Aspects — Fair Labor Standards Act generally, see 29 USCS §§ 201 et seq.

JUDICIAL DECISIONS

1. In general.

Highway patrolmen are not peace officers within the sense that sheriffs, constables and policemen are such to enforce general laws of state, but act within limited sphere of authority granted them under this statute [Code 1942, § 8079] and Code 1942, § 8082. Smith v. Rankin County, 208 Miss. 792, 45 So. 2d 592 (1950).

State highway patrolman, not being peace officer, has same authority that private citizen would have to make arrest of a fleeing homicide under the same circumstances, and no more, and would be entitled to receive statutory reward the same as if he had been private citizen and had made arrest and delivery of prisoner under circumstances provided for by Code 1942, § 2482. Smith v. Rankin County, 208 Miss. 792, 45 So. 2d 592 (1950).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police and Constables §§ 40, 41 et seq.

CJS. 80 C.J.S., Sheriffs and Constables §§ 502 et seq.

§ 45-3-9. Qualifications of members of Highway Safety Patrol; agents of Mississippi Bureau of Narcotics employed as enforcement troopers.

(1) The chief of patrol, directors, inspectors, assistant inspectors, patrol officers and investigators of the department shall be selected after an examination as to physical and mental fitness, knowledge of traffic laws, rules and regulations of this state, the laws of the state pertaining to arrest, and the rules and regulations of the Mississippi Department of Public Safety and Public Service Commission, such examination to be prescribed by the commis-

sioner. At the time of appointment they shall be citizens of the United States and the State of Mississippi, of good moral character, and shall be not less than twenty-one (21) years of age and shall have:

(a) Sixty (60) hours and/or an associate degree from an accredited educational institution with a minimum grade point average of 2.0 on a 4.0 scale; or

(b) A high school diploma or High School Equivalency Diploma and at least four (4) years of active military duty or six (6) years of National Guard duty; a Department of Defense Form 214 (DD214), Certificate of Release or Discharge from Active Duty, or a National Guard Bureau Form 22 (NGB Form 22), Report of Separation, or a National Guard Bureau Form 23 (NGB Form 23), ARNG Retirement Credit Points Statement must be submitted by the applicant; or

(c) A high school diploma or High School Equivalency Diploma, minimum standard certification from an accredited law enforcement academy and a minimum of one (1) year of law enforcement field experience; or

(d) A high school diploma or High School Equivalency Diploma if the applicant is not less than twenty-three (23) years of age.

(2) Sworn agents of the Mississippi Bureau of Narcotics who are employed as enforcement troopers shall retain all compensatory, personal and sick leave accrued pursuant to Sections 25-3-92, 25-3-93 and 25-3-95.

SOURCES: Codes, 1942, §§ 8079, 8086; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 1; Laws, 1946, ch. 420, § 2; Laws, 1948, ch. 343, § 2; Laws, 1950, ch. 407, § 1; Laws, 1952, ch. 357, § 1; Laws, 1956, ch. 377 § 1; Laws, 1960, ch. 338, § 1; Laws, 1962, ch. 515; Laws, 1962, ch. 516; Laws, 1964, ch. 324, § 9; Laws, 1964, ch. 453, § 1; Laws, 1966, ch. 568, § 1; Laws, 1968, ch. 472, § 1; Laws, 1970, ch. 482; Laws, 1971, ch. 518, § 1; Laws, 1972, ch. 527, § 1; Laws, 1973, ch. 485, § 1; Laws, 1980, ch. 561, § 21; Laws, 1981, ch. 511, § 3; Laws, 1984, ch. 518, § 3; Laws, 1991, ch. 468 § 2; Laws, 1998, ch. 442, § 1; Laws, 2010, ch. 550, § 3; Laws, 2011, ch. 503, § 1; Laws, 2012, ch. 561, § 1; Laws, 2014, ch. 398, § 14, eff from and after July 1, 2014.

Editor's Note — Laws of 1984, ch. 518, § 5, as amended by Laws of 1984, 1st ex sess., ch. 28, § 3 and as amended by Laws of 1985, ch. 504, § 7, effective July 1, 1985, provides as follows:

"SECTION 5. (1) Nothing in Section 27-5-75 or 49-1-15 shall be construed to require employees who were hired prior to July 1, 1985, to retire prior to attaining the age of sixty-five (65) years unless, after attaining the age of sixty-two (62) years on or before June 30, 1986, and those who attain the age of sixty (60) years thereafter, they have completed four (4) years of creditable service for purposes of the Public Employees' Retirement System, at which time they shall be retired forthwith.

"(2) Nothing in Section 27-5-75 or 49-1-15 shall be construed to prevent the State Tax Commission or the Mississippi Department of Wildlife Conservation from operating under an interim retirement policy until June 30, 1985, provided that said policy conforms with the provisions of The Age Discrimination In Employment Act of 1967, 29 U.S.C., Sections 621 et seq., including Section 623(f) thereof.

"(3) No inspection station employee or field inspector employed by the State Tax Commission, or conservation officer employed in the Bureau of Fisheries and Wildlife, shall be dismissed prior to July 1, 1985, solely because of his age, if said employee has not reached the age of seventy (70) years."

Amendment Notes — The 2014 amendment substituted "High School Equivalency Diploma" for "GED" in (1)(b), (1)(c), and (1)(d).

JUDICIAL DECISIONS

1. In general.

In order to eradicate the effects of past racial discrimination in hiring of highway patrol officers, the district court, pursuant to a mandate from the circuit court of appeals to insure an increase in the number of blacks, ordered the Department of Public Safety to submit a plan providing for a more extensive recruiting program, administration of a job related test, and, though quota hiring was not necessary, providing for, temporarily, giving first chance at employment to black applicants meeting minimal testing, physical, training and background requirements; the Department of Public Safety was also required to compile records and submit periodic reports to the district court so that court could determine whether the goal of increasing the number of blacks was met. Morrow v. Dillard, 412 F. Supp. 494 (S.D. Miss. 1976), rev'd on other grounds, 580 F.2d 1284 (5th Cir. 1978).

The requirement that highway patrol officers have a high school education or its equivalent bore a demonstrable relationship to successful performance of the job, was not shown to have a racially discriminatory impact, and thus did not violate the constitutional rights of minority races. Morrow v. Dillard, 412 F. Supp. 494 (S.D. Miss. 1976), rev'd on other grounds, 580 F.2d 1284 (5th Cir. 1978).

In case involving alleged racial discrimination in employment practices of Mississippi Highway Patrol, U. S. District Court failed to order sufficient affirmative relief to eradicate state's unconstitutional practices, and case would be remanded, with guidelines, to fashion an appropriate decree which will have the certain result of increasing the number of blacks on the Highway Patrol. Morrow v. Crisler, 491 F.2d 1053 (5th Cir. 1974), stay denied, 417 U.S. 965, 94 S. Ct. 3169, 41 L. Ed. 2d 1137 (1974), cert. denied, 419 U.S. 895, 95 S. Ct. 173, 42 L. Ed. 2d 139 (1974), on remand, 412 F. Supp. 494 (S.D. Miss. 1976).

Highway patrolmen are not peace officers within the sense that sheriffs, constables and policemen are such to enforce general laws of state, but act within limited sphere of authority granted them under this statute [Code 1942, § 8079] and Code 1942, § 8082. Smith v. Rankin County, 208 Miss. 792, 45 So. 2d 592 (1950).

State highway patrolman, not being peace officer, has same authority that private citizen would have to make arrest of a fleeing homicide under the same circumstances, and no more, and would be entitled to receive statutory reward the same as if he had been private citizen and had made arrest and delivery of prisoner under circumstances provided for by Code 1942, § 2482. Smith v. Rankin County, 208 Miss. 792, 45 So. 2d 592 (1950).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 7-9 et seq.

CJS. 80 C.J.S., Sheriffs and Constables §§ 3, 4.

§ 45-3-11. Prohibitions as to engaging in political activity and soliciting campaign contributions.

No member of the patrol shall, while in such position, be a candidate for any political office or take part in or contribute any money or other things of value, directly or indirectly, to any political campaign or to any candidate for public office. Anyone violating this provision shall be guilty of a misdemeanor, and upon final conviction shall be punished as provided by law, and shall be dismissed from the patrol.

It shall be unlawful for any person to solicit or attempt to solicit any money or thing of value from any employee of the Mississippi Highway Safety Patrol for political purposes. Any person violating this provision shall be guilty of a misdemeanor and upon final conviction shall be punished as provided by law.

SOURCES: Codes, 1942, § 8079; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 1; Laws, 1946, ch. 420, § 2; Laws, 1948, ch. 343, § 2; Laws, 1950, ch. 407, § 1; Laws, 1952, ch. 357, § 1; Laws, 1956, ch. 377, § 1; Laws, 1960, ch. 338, § 1; Laws, 1962, ch. 515; Laws, 1964, ch. 324, § 9; Laws, 1966, ch. 568, § 1; Laws, 1968, ch. 472, § 1; Laws, 1970, ch. 482; Laws, 1971, ch. 518, § 1, eff from and after July 1, 1971.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 45-3-13. No exemption from military service for patrolmen.

No patrolman shall be exempt from military service because of appointment to the highway safety patrol.

SOURCES: Codes, 1942, § 8079-01; Laws, 1944, ch. 330, § 2.

§ 45-3-15. Preference to returning veterans.

All patrolmen who have been or are called to the armed services shall be given preference in employment upon their return.

SOURCES: Codes, 1942, § 8080; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 1; Laws, 1946, ch. 420, § 3.

Cross References — Veterans' preference in appointments by state personnel board, see §§ 25-9-301 through 25-9-305.

§ 45-3-17. Dismissal of patrolmen.

During the period of the first twelve (12) months after appointment, any member of the Mississippi Highway Safety Patrol shall be subject to dismissal at the will of the commissioner. After twelve (12) months' service, no member of the patrol shall be subject to dismissal or otherwise have his salary adversely affected except for cause, and any such action against an officer of the Mississippi Highway Safety Patrol shall be subject to and proceed under the laws, rules and regulations of the state personnel system.

SOURCES: Codes, 1942, § 8081; Laws, 1938, ch. 143; Laws, 1981, ch. 511, § 2, eff from and after passage (approved April 20, 1981).

Cross References — Dismissal under the state personnel system, see § 25-9-127.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 16 et seq.

CJS. 80 C.J.S., Sheriffs and Constables §§ 6-10.

§ 45-3-19. Regulations governing discipline, uniforms, supplies, and the like.

The commissioner shall have authority, with the approval of the Governor, to make needful and proper rules and regulations governing the proper discipline of the members of the patrol, of selecting, designing and effecting an appropriate uniform therefor, and prescribing outfits and equipment and supplies necessary and proper to carry out the objects of this chapter. The commissioner shall provide the same as well as such weapons, vehicles and equipment as shall be necessary and proper and shall be responsible therefor. The commissioner, with the approval of the Governor, shall, from time to time, establish headquarters and substations, as he shall deem it advisable for the objects and purposes of such an organization and for the enforcement of the laws, rules and regulations hereinabove provided, and to that end he may, with the approval of the Governor acquire the right to use lands and buildings for the accommodation of members of said organization and properties and equipment.

SOURCES: Codes, 1942, § 8087; Laws, 1938, ch. 143; Laws, 1944, ch. 331, § 2.

§ 45-3-21. Powers and duties of patrol, generally.

(1) The powers and duties of the Highway Safety Patrol shall be, in addition to all others prescribed by law, as follows:

(a) To enforce all of the traffic laws, rules and regulations of the State of Mississippi upon all highways of the state highway system and the rights-of-way of such highways; provided, however, that if any person commits an offense upon the state highway system and be pursued by a member of the Highway Safety Patrol, such patrol officer may pursue and apprehend such offender upon any of the highways or public roads of this state, or to any other place to which such offender may flee.

(b) To enforce all rules and regulations of the commissioner promulgated pursuant to legal authority.

(c) When so directed by the Governor, to enforce any of the laws of this state upon any of the highways or public roads thereof.

(d) Upon the request of the State Tax Commission, and with the approval of the Governor, to enforce all of the provisions of law with reference to the registration, license and taxation of vehicles using the highways of this state, and relative to the sizes, weights and load limits of such vehicles, and to enforce the provisions of all other laws administered by the State Tax Commission upon any of the highways or public roads of this state; and for such purpose the Highway Safety Patrol shall have the authority to collect and receive all taxes which may be due under any of such laws, and to report and remit same to the State Tax Commission in the manner required by law, or the rules and regulations of the commission.

(e) Upon request of the Mississippi Transportation Commission, and when so instructed by the commissioner, to aid and assist in the enforcement of all laws which such agencies are authorized or required to enforce, and in the enforcement of the rules and regulations of such agencies, including the Mississippi Motor Carrier Regulatory Law of 1938 and rules and regulations promulgated thereunder.

(f) To arrest without warrant any person or persons committing or attempting to commit any misdemeanor, felony or breach of the peace within their presence or view, and to pursue and so arrest any person committing such an offense to and at any place in the State of Mississippi where he may go or be. Nothing herein shall be construed as granting the Mississippi Highway Safety Patrol general police powers.

(g) To aid and assist any law enforcement officer whose life or safety is in jeopardy. Additionally, officers of the Highway Safety Patrol may arrest without warrant any fugitive from justice who has escaped or who is using the highways of the state in an attempt to flee. With the approval of the commissioner or his designee, officers of the Highway Safety Patrol may assist other law enforcement agencies in manhunts for convicted felons who have escaped and/or for alleged felons where there is probable cause to believe that the person being sought committed the felony and a felony had actually been committed.

(h) To cooperate with the State Forest Service by reporting all forest fires.

(i) Upon request of the sheriff or his designee, or board of supervisors of any county or the chief of police or mayor of any municipality, and when so instructed by the commissioner or his designee, to respond to calls for assistance in a law enforcement incident; such request and action shall be noted and clearly reflected on the radio logs of both the Mississippi Highway Safety Patrol district substation and that of the requesting agency, entered on the local NCIC terminal, if available, and a request in writing shall follow within forty-eight (48) hours. Additionally, the time of commencement and termination of the specific law enforcement incident shall be clearly noted on the radio logs of both law enforcement agencies.

(2) The Legislature declares that the primary law enforcement officer in any county in the State of Mississippi is the duly qualified and elected sheriff thereof, but for the purposes of this subsection there is hereby vested in the Department of Public Safety, in addition to the powers hereinabove mentioned and the other provisions of this section under the terms and limitations hereinafter mentioned and for the purpose of insuring domestic tranquility and for the purpose of preventing or suppressing, or both, crimes of violence, acts and conduct calculated to, or which may, provoke or lead to violence and/or incite riots, mobs, mob violence, a breach of the peace, and acts of intimidation or terror, the powers and duties to include the enforcement of all the laws of the State of Mississippi relating to such purposes, to investigate any violation of

the laws of the State of Mississippi and to aid in the arrest and prosecution of persons charged with violating the laws of the State of Mississippi which relate to such purposes. Investigators of the Bureau of Investigation of the Department of Public Safety shall have general police powers to enforce all the laws of the State of Mississippi. All officers of the Department of Public Safety charged with the enforcement of the laws administered by that agency, for the purposes herein set forth, shall have full power to investigate, prevent, apprehend and arrest law violators anywhere in the state, and shall be vested with the power of general police officers in the performance of their duties. The officers of the Department of Public Safety are authorized and empowered to carry and use firearms and other weapons deemed necessary in the discharge of their duties as such and are also empowered to serve warrants and subpoenas issued under the authority of the State of Mississippi. The Governor shall be authorized to offer and pay suitable rewards to persons aiding in the investigation, apprehension and conviction of persons charged with acts of violence, or threats of violence or intimidation or acts of terrorism. The additional powers herein granted to or vested in the Department of Public Safety or any of its officers or employees by this section, excepting investigating powers, and those powers of investigators who shall have general police power, being the investigators in the Bureau of Investigation of the Department of Public Safety, shall not be exercised by the Department of Public Safety, or any of its officers or employees, except upon authority and direction of the Governor or Acting Governor, by proclamation duly signed, in the following instances, to wit:

(a) When requested by the sheriff or board of supervisors of any county or the mayor of any municipality on the grounds that mob violence, crimes of violence, acts and conduct of terrorism, riots or acts of intimidation, or either, calculated to or which may provoke violence or incite riots, mobs, mob violence, violence, or lead to any breach of the peace, or either, and acts of intimidation or terror are anticipated, and when such acts or conduct in the opinion of the Governor or Acting Governor would provoke violence or any of the foregoing acts or conduct set out in this subsection, and the sheriff or mayor, as the case may be, lacks adequate police force to prevent or suppress the same.

(b) Acting upon evidence submitted to him by the Department of Public Safety, or other investigating agency authorized by the Governor or Acting Governor to make such investigations, because of the failure or refusal of the sheriff of any county or mayor of any municipality to take action or employ such means at his disposal, to prevent or suppress the acts, conduct or offenses provided for in subsection (1) of this section, the Governor or Acting Governor deems it necessary to invoke the powers and authority vested in the Department of Public Safety.

(c) The Governor or Acting Governor is hereby authorized and empowered to issue his proclamation invoking the powers and authority vested by this paragraph, as provided in paragraphs (a) and (b) of this subsection, and when the Governor or Acting Governor issues said proclamation in accordance herewith, said proclamation shall become effective upon the signing thereof and shall continue in full force and effect for a period of ninety (90) days, or for a shorter period if otherwise ordered by the Governor or Acting Governor. At the signing of the proclamation by the Governor or Acting Governor, the Department of Public Safety and its officers and employees shall thereupon be authorized to exercise the additional power and authority vested in them by this paragraph. The Governor and Acting Governor may issue additional proclamations for periods of ninety (90) days each under the authority of paragraphs (a) and (b) of this subsection (2).

(3) All proclamations issued by the Governor or Acting Governor shall be filed in the Office of the Secretary of State on the next succeeding business day.

(4) It is not the intention of this section to vest the wide powers and authority herein provided for, as general powers of the Department of Public Safety, and the same are not hereby so vested, but to limit these general powers to cases and incidents wherein it is deemed necessary to prevent or suppress the offenses and conditions herein mentioned in this and other subsections of this section, and under the terms and conditions hereinabove enumerated, it being the sense of the Legislature that the prime duties of the Department of Public Safety are to patrol the highways of this state and enforce the highway safety laws.

(5) Patrol officers shall have no interest in any costs in the prosecution of any case through any court; nor shall any patrol officer receive any fee as a witness in any court held in this state, whether a state or federal court.

(6) Provided, however, that the general police power vested by virtue of the terms of subsection (2) of this section is solely for the purposes set out in said subsection.

SOURCES: Codes, 1942, §§ 8082, 8082-01; Laws, 1938, ch. 143; Laws, 1944, ch. 330, § 2; Laws, 1946, ch. 420, § 4; Laws, 1964, ch. 324, § 10; Laws, 1968, ch. 538, § 1; Laws, 1972, ch. 304, § 1; Laws, 1976, ch. 337; Laws, 1980, ch. 527; Laws, 1984, ch. 350; Laws, 1986, ch. 310; Laws, 1988, ch. 520; Laws, 1991, ch. 589, § 1; Laws, 1993, ch. 332, § 1; Laws, 1994, ch. 447, § 1; Laws, 1995, ch. 342, § 1; Laws, 1996, ch. 318, § 1; Laws, 1999, ch. 498, § 1; Laws, 2002, ch. 419, § 1; Laws, 2007, ch. 439, § 1; Laws, 2007, ch. 498, § 2, eff from and after July 1, 2007.

Editor's Note — Laws of 2007, ch. 498, § 3 provides:

"SECTION 3. It is the intent of the Legislature that the amendments to Sections 77-7-16 and 45-3-21, Mississippi Code of 1972, contained in Laws of 2007, ch. 498, shall supercede the amendments to Section 77-7-16 contained in Laws of 2007, ch. 304, and to Section 45-3-21, contained in Laws of 2007, ch. 439."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Duties of Highway Safety Patrol and local law enforcement agencies with respect to the registration of sex offenders, see §§ 45-33-21 et seq.

Duty of highway patrol to investigate accidents required to be reported to Department of Public Safety, see § 63-3-411.

Uniform Traffic Ticket Law, see § 63-9-21.
Issuance of citations in lieu of arrest, see §§ 63-10-1 et seq.
Mississippi Transportation Commission, see § 65-1-3.
Mississippi Motor Carrier Regulatory Law of 1938, see §§ 77-7-1 et seq.

JUDICIAL DECISIONS

1. In general.

Highway patrolmen are not peace officers in the sense that sheriffs, constables and policemen are such to enforce general laws of state, but act within limited sphere of authority granted them under this statute [Code 1942, § 8082] and Code 1942, § 8079. Smith v. Rankin County, 208 Miss. 792, 45 So. 2d 592 (1950).

State highway patrolman, not being peace officer, has same authority that private citizen would have to make arrest of fleeing homicide under same circumstances, and no more, and would be entitled to receive statutory reward the same as if he had been private citizen and had made arrest and delivery of prisoner under circumstances provided for by Code 1942, § 2482. Smith v. Rankin County, 208 Miss. 792, 45 So. 2d 592 (1950).

A highway patrolman is not vested with authority to begin chasing a motorist on the highway unless at the time he has good reason to believe, and does believe, that the motorist has or is violating the law at the time that the chase is begun. Gause v. State, 203 Miss. 377, 34 So. 2d 729 (1948).

ATTORNEY GENERAL OPINIONS

Legislature removed limitation on highway patrol that it could make arrest for crime committed in presence of officer only upon highway or rights-of-way, and that highway patrol officer may make arrest for misdemeanor, felony or breach of peace committed in his or her presence anywhere in State of Mississippi. Huffman, April 26, 1990, A.G. Op. #90-0278.

Highway patrolman may not enforce municipal ordinances, including traffic ordinances; highway patrolman may pursue person who has committed offense upon state highway system onto any of highways or public roads of state and additionally, highway patrolmen may assist chief of police in a law enforcement incident. Buffington Sept. 1, 1993, A.G. Op. #93-0601.

RESEARCH REFERENCES

ALR. Validity of routine roadblocks by state or local police for purpose of discovery of vehicular or driving violations. 37 A.L.R.4th 10.

Failure to restrain drunk driver as ground of liability of state or local government unit or officer. 48 A.L.R.4th 320.

Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession which is claimed to have such legal status. 52 A.L.R.5th 155.

Validity of police roadblocks or checkpoints for purpose of discovery of alcoholic intoxication — post-Sitz cases. 74 A.L.R.5th 319.

Validity of police roadblocks or checkpoints for purpose of discovery of illegal narcotics violations. 82 A.L.R.5th 103.

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 30, 31, 39.

CJS. 80 C.J.S., Sheriffs and Constables §§ 51 et seq.

Lawyers' Edition. Law enforcement officer's authority, under Federal Constitution's Fourth Amendment, to stop and briefly detain, and to conduct limited protective search of or "frisk," for investigative purposes, person suspected of criminal activity — Supreme Court cases. 104 L. Ed. 2d 1046.

§ 45-3-23. Commissioner not to impose rule which impedes enforcement of traffic laws.

It shall be unlawful for the commissioner to impose any rule of limitation of daily mileage travel or any other rule which will impede highway patrolmen from effectively enforcing the traffic laws in their jurisdiction of assignment. The commissioner will insure that patrolmen spend the maximum amount of their daily work schedule within the highway rights-of-way as a deterrent to traffic violations.

SOURCES: Codes, 1942, § 8079; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 1; Laws, 1946, ch. 420, § 2; Laws, 1948, ch. 343, § 2; Laws, 1950, ch. 407, § 1; Laws, 1952, ch. 357, § 1; Laws, 1956, ch. 377, § 1; Laws, 1960, ch. 338, § 1; Laws, 1962, ch. 515; Laws, 1964, ch. 324, § 9; Laws, 1966, ch. 568, § 1; Laws, 1968, ch. 472, § 1; Laws, 1970, ch. 482; Laws, 1971, ch. 518, § 1; Laws, 1972, ch. 527, § 1; Laws, 1973, ch. 485, § 1, eff from and after July 1, 1973.

§ 45-3-25. Patrolman preferring traffic charge to forward abstract of court record.

Whenever any patrolman shall prefer any traffic charge whatsoever against any person in any court, it shall be the duty of such patrolman, upon the termination of such proceeding, to mail two (2) copies of the abstract of the court record immediately to the Commissioner of Public Safety at Jackson, Mississippi, showing the nature of the charge preferred, the date of the trial upon such charge, the disposition of the matter by the court and the sentence, if any, imposed by the court. Such abstract shall be signed by the presiding judge of the court in which the charge was preferred. Upon receipt of such abstracts, it shall be the duty of the commissioner to retain a copy for the use of, and inspection by, the State Auditor.

SOURCES: Codes, 1942, § 8082-11; Laws, 1946, ch. 420, § 12; Laws, 1964, ch. 324, § 11; Laws, 2009, ch. 546, § 14, eff from and after passage (approved Apr. 15, 2009.)

§ 45-3-27. Bearing of arms; compliance with dress regulations.

Members of the highway safety patrol shall be entitled to bear arms in the discharge of their duties. Said members shall, while in the discharge of their duties, wear such dress, uniform, and insignia, and carry such credentials as shall be prescribed by the commissioner.

SOURCES: Codes, 1942, § 8088; Laws, 1938, ch. 143; Laws, 1964, ch. 324, § 12, eff from and after passage (approved May 22, 1964).

Cross References — Right of Highway Commission security guards to bear arms, see § 65-1-131.

§ 45-3-29. Penalty for impersonating patrolman; exception for county patrolman; exception for retired patrolman with prior authorization from commissioner.

(1) Except as otherwise authorized under this section, it shall be unlawful for any person not authorized so to do to impersonate a state highway safety patrolman, wear or use the insignia or uniform thereof, or to in anywise imitate or impersonate such patrolman. Any person adjudged guilty of violating this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than One Hundred Dollars ($100.00) or by imprisonment in the county jail, where such offense is committed, for a term not exceeding one (1) year, or by both such fine and imprisonment. Nothing in this section, however, shall be construed to prevent or preclude the boards of supervisors of the several counties from employing county highway patrolmen as presently authorized by law, and said county patrolmen shall, when authorized by the commissioner and under rules and regulations with respect thereto, after completing such examinations and meeting such requirements as are specified by the commissioner, be entitled to wear the uniform and insignia of state highway safety patrolmen and discharge the duties thereof.

(2) It shall not be unlawful or a violation of this section for a retired State Highway Safety Patrol officer to wear the uniform and insignia of the State Highway Safety Patrol when making presentations, delivering speeches or addressing public or private audiences for the purpose of entertaining or amusing such audiences provided such retired officer obtains written authorization from the Commissioner of Public Safety before engaging in such events. The approval of the commissioner shall not be required for each separate event but shall remain effective as an authorization for all such events until revoked or rescinded by the commissioner.

SOURCES: Codes, 1942, § 8088; Laws, 1938, ch. 143; Laws, 1964, ch. 324, § 12; Laws, 2000, ch. 521, § 1, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Prohibition against county highway patrolmen wearing uniforms that are the same as or substantially identical to those worn by State Highway Safety patrolmen, see §§ 45-7-3, 45-7-23.

Employment of county highway patrolmen, see §§ 45-7-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 32 Am. Jur. 2d, False Personation § 6.

CJS. 35 C.J.S., False Personation § 3.

§ 45-3-31. Uniforms, automobiles and other equipment.

The commissioner is authorized to purchase (a) uniforms for the members of the highway safety patrol at a price not to exceed One Hundred Fifty Dollars ($150.00) each, (b) automobiles, motorcycles and other equipment necessary for the efficient operation of the highway safety patrol, but the number of passenger automobiles purchased, owned or operated by the highway safety patrol shall not exceed the number set forth in Section 25-1-85, Mississippi Code of 1972, and (c) identification equipment in a sum of not more than Ten Thousand Dollars ($10,000.00). The commissioner is further authorized to purchase or lease necessary equipment for two-way radio sub and booster stations, and he may equip each of the patrol automobiles with sending and receiving radios, of a type to be selected by him, within the limits of any appropriation made therefor. The commissioner may trade in used equipment on the purchase of new equipment or other materials.

The commissioner shall allow and furnish to each patrolman at least two (2) complete uniforms per year. The commissioner shall keep all automobiles, motorcycles and other equipment in good state of repair and pay the expenses incident thereto, and he is authorized to pay the expenses of maintaining and operating necessary equipment for two-way radio sub and booster stations purchased or leased.

SOURCES: Codes, 1942, § 8083; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 2; Laws, 1946, ch. 420, § 5; Laws, 1948, ch. 343, § 3; Laws, 1950, ch. 407, § 2; Laws, 1956, ch. 377, § 3, eff July 1, 1956.

Editor's Note — Section 25-1-85 referred to in the first paragraph was repealed by Laws of 2001, ch. 561, § 2, eff from and after passage (approved April 7, 2001).

§ 45-3-33. Uniforms, automobiles and other equipment; advertising for bids.

Except as is otherwise provided in Section 25-1-85, Mississippi Code of 1972, the commissioner shall, before buying any equipment or other materials where the amount is in excess of Five Hundred Dollars ($500.00), advertise in at least one (1) newspaper published in the city of Jackson, his intention of buying such materials or equipment (and, if such be the case, his intention to trade in any used equipment on the purchase price of said materials or equipment) by at least one (1) publication in such paper at least ten (10) days before the equipment or materials shall be purchased, and shall receive bids thereupon. In advertising for bids for automobiles and motorcycles, the commissioner shall have the authority to specify the make and model desired. Said equipment or materials shall be purchased from such persons, firms or corporations submitting the best and lowest bid for the particular class of equipment or materials desired. In the case of purchasing automobiles or motorcycles, there shall be at least two (2) bids submitted for each type desired.

SOURCES: Codes, 1942, § 8083; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 2; Laws, 1946, ch. 420, § 5; Laws, 1948, ch. 343, § 3; Laws, 1950, ch. 407, § 2; Laws, 1956, ch. 377, § 3, eff July 1, 1956.

Editor's Note — Section 25-1-85 referred to in this section was repealed by Laws of 2001, ch. 561, § 2, eff from and after passage (approved April 7, 2001).

§ 45-3-35. Camera equipment for patrol cars.

The commissioner of public safety is hereby authorized to procure and equip, in addition to any other equipment required, each patrol car used in the patrolling of the highways of this state, with a suitable camera equipped for making flashlight photographs either during the day time or night time. The cost of each such camera shall not exceed the sum of One Hundred Dollars ($100.00).

Before making purchase hereof the commissioner of public safety shall advertise his intention of buying same by one publication in at least one (1) newspaper having general circulation in the State of Mississippi, at least ten (10) days before the purchase of such equipment, which advertisement shall distinctly describe the articles to be purchased and shall receive sealed bids thereon, which shall be opened in public at a time and place to be specified in the advertisement. In addition to the purchase of the necessary cameras the commissioner is authorized to purchase all necessary films, developing equipment, and other supplies necessary for the development of negatives for the production of the finished photograph. Such additional supplies shall be purchased from the person, firm, or corporation submitting the lowest and best bid for the particular camera and other supplies desired. The commissioner reserves the right to reject any and all bids submitted.

Every patrolman who shall be required to use a camera in the performance of his official duties shall be adequately trained and instructed as to the proper use of the equipment before attempting to make photographs.

The commissioner is authorized to employ not exceeding two (2) persons at a salary not to exceed an average of Two Hundred and Twenty Dollars ($220.00) per month for use in developing and perfecting photographs taken.

All negatives of any official picture taken and at least one (1) copy of each finished photograph of each such negative shall be properly identified and filed as a part of the records of the office of the commissioner of public safety.

SOURCES: Codes, 1942, § 8229-17; Laws, 1948, ch. 343, § 25; Laws, 1950, ch. 407, § 6; Laws, 1952, ch. 357, § 4.

§ 45-3-37. Markings on patrol cars.

The state patrol insignia shall be placed on each door of all cars used patrolling the highways and, in addition, such cars may have such other distinguishing markings as the commissioner of public safety shall deem proper.

SOURCES: Codes, 1942, § 8083; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 2; Laws, 1946, ch. 420, § 5; Laws, 1948, ch. 343, § 3; Laws, 1950, ch. 407, § 2; Laws, 1956, ch. 377, eff July 1, 1956.

§ 45-3-39. Prohibition as to personal use of cars, materials and equipment.

No state officer or other person shall utilize at any time any uniform, car, material or equipment of the Mississippi Highway Safety Patrol for his personal use or for private purposes except in an emergency, and except to the extent authorized by Section 25-1-85, Mississippi Code of 1972. A breach of this provision shall constitute a misdemeanor punishable by a fine not to exceed One Hundred Dollars ($100.00), or thirty (30) days in jail, or both. Nothing in this section, however, shall be construed to apply to the Governor or Lieutenant Governor of the State of Mississippi.

SOURCES: Codes, 1942, §§ 8083, 8085; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 2; ch. 331, § 1; Laws, 1946, ch. 420, §§ 5, 6; Laws, 1948, ch. 343, §§ 3, 4; Laws, 1950, ch. 407, §§ 2, 3; Laws, 1956, ch. 377, §§ 2, 3, eff July 1, 1956.

Editor's Note — Section 25-1-85 referred to in this section was repealed by Laws of 2001, ch. 561, § 2, eff from and after passage (approved April 7, 2001).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 45-3-41. Radio receiving sets may be installed in certain counties and municipalities.

(1) Any county or municipality now or hereafter having a twenty-four (24) hour law enforcement system is hereby authorized by an order duly entered upon the minutes of such governing authority thereof to request the Mississippi Highway Safety Patrol to purchase and install in some permanent office provided therefor a proper and suitable radio receiving set, subject to the approval of the Mississippi Highway Safety Patrol.

(2) The Mississippi Highway Safety Patrol shall, upon the receipt of such request by any such municipality or county, purchase and install in such county or municipality in a building provided by such county or municipality a proper and suitable radio receiving set, which shall be tuned or adjusted in order to receive broadcasts from the radio station or stations operated by the Mississippi Highway Safety Patrol. The county or municipality making such request when such receiving set is duly installed shall reimburse the state highway patrol for all sums paid out in the purchase price of such set.

SOURCES: Codes, 1942, § 8090-01; Laws, 1944, ch. 324, §§ 1, 2.

§ 45-3-43. Radio substations and booster stations for use of highway safety patrol.

The board of supervisors of any county and the mayor and board of aldermen, or other governing body of any municipality, are hereby authorized and empowered, in their discretion, to construct and erect radio substations and booster stations for the use of the highway safety patrol, to install therein suitable and necessary radio receiving and transmitting equipment, and to appropriate funds for such purposes from the general county or municipal fund, as the case may be.

In the purchase and installation of such radio transmitting and receiving equipment the said board of supervisors or governing authority may authorize the commissioner of public safety to make the purchase and installation thereon on behalf of the county or municipality, as the case may be, and may pay the cost of such purchase and installation out of the county or municipal general fund.

SOURCES: Codes, 1942, § 8090-02; Laws, 1948, ch. 344, § 1.

§ 45-3-45. Training school for patrolmen.

The commissioner is hereby authorized to set up a training school for patrolmen. He shall prescribe the rules and regulations for the operation of same and the period of training to be required of appointees to the Mississippi Highway Safety Patrol. However, the period of training for recruits shall not be less than eighty (80) days. The expense of such training shall be paid in the same manner as other expenses of the patrol.

SOURCES: Codes, 1942, § 8086; Laws, 1938, ch. 143; Laws, 1962, ch. 516; Laws, 1964, ch. 453, § 1; Laws, 2002, ch. 343, § 1, eff from and after passage (approved Mar. 18, 2002.)

§ 45-3-47. Training school for patrolmen; selection program.

(1) The selection program for such training school shall consist of application, examination, investigation and interview:

(a) **Application.** — The commissioner shall prescribe an application that shall contain a case history of the applicant, fingerprints, picture of the applicant, certified copies of birth certificate and transcript of school records. Said application may include certified copies of any discharge from the services of the United States government.

(b) **Examination.** — The commissioner shall adopt a standardized test for applicants and each shall be required to take the prescribed examination on a competitive basis. The commissioner shall further require a physical examination by a staff of competent doctors to determine that each applicant selected is in good physical condition, including height-weight ratio as recommended by the United States Air Force, with no deformities.

(c) **Investigation.** — The commissioner shall require an investigation of each applicant to determine that he or she is of good moral character, between the ages of twenty-three (23) and thirty-two (32), that he or she has completed a high school education, and that he or she is honest, reliable, loyal and above reproach.

(d) **Interview.** — The commissioner shall require an interview of each applicant considered for patrol service to be conducted and may require an interview with his family if necessary to determine that the applicant fulfills the requirements as prescribed in paragraph (c), as well as any other rules and regulations that may be prescribed. The commissioner may at his discretion require the services of psychiatrists, doctors, police officers or other professional people in conducting such interviews.

(2) Before any person may be selected to attend a school or be appointed as a member of the Mississippi Highway Safety Patrol, the applicant must fulfill all the requirements as prescribed in this section and meet the standards prescribed in this section and meet the standards prescribed by the department, and may be required to submit to a polygraph examination in connection with the employment application.

(3) All applications, birth certificates, transcripts and other records submitted by an applicant shall become the property of the State of Mississippi and the department of public safety, shall be held confidential and shall not be discoverable by judicial process. Such records may be destroyed after five (5) years from the time of application.

SOURCES: Codes, 1942, § 8086; Laws, 1938, ch. 143; Laws, 1962, ch. 516; Laws, 1964, ch. 453, § 1; Laws, 1981, ch. 511, § 4, eff from and after passage (approved April 20, 1981).

JUDICIAL DECISIONS

1. In general.

While the drastic remedy of quota hiring is not indicated or necessary at this time, pattern of past racial discrimination by the Mississippi Highway Patrol mandates that the Patrol be temporarily required to first offer appointment to every black applicant who meets the following minimal qualifications which the court has determined to be valid: (1) the applicant passes the approved test; (2) he/she meets the statutory educational requirement; (3) he/she passes the physical examination and successfully completes training school; (4) he/she passes the Patrol's standardized background investigation. Morrow v. Dillard, 412 F. Supp. 494 (S.D. Miss. 1976), rev'd on other grounds, 580 F.2d 1284 (5th Cir. 1978).

In case involving alleged racial discrimination in employment practices of Mississippi Highway Patrol, U. S. District Court failed to order sufficient affirmative relief to eradicate state's unconstitutional practices, and case would be remanded, with guidelines, to fashion an appropriate decree which will have the certain result of increasing the number of blacks on the Highway Patrol. Morrow v. Crisler, 491 F.2d 1053 (5th Cir. 1974), stay denied, 417 U.S. 965, 94 S. Ct. 3169, 41 L. Ed. 2d 1137 (1974), cert. denied, 419 U.S. 895, 95 S. Ct. 173, 42 L. Ed. 2d 139 (1974), on remand, 412 F. Supp. 494 (S.D. Miss. 1976).

§ 45-3-49. Penalty for violating provisions of chapter.

It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is declared by such law or other law of this state to be a felony.

Unless another penalty is provided in this chapter or by the laws of this state, every person convicted of a misdemeanor for the violation of any provision of this chapter shall be punished by fine of not more than Five

Hundred Dollars ($500.00) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 8089; Laws, 1938, ch. 143.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 45-3-51. Retirants or beneficiaries of officers killed in line of duty permitted to retain one sidearm.

Each member of the Mississippi Highway Safety Patrol or agent of the Mississippi Bureau of Narcotics who retires under the Highway Safety Patrol Retirement System or the Public Employees' Retirement System, for superannuation or for reason of disability or a beneficiary of such member of the Highway Safety Patrol or agent of the Mississippi Bureau of Narcotics who is killed in the line of duty shall be allowed to retain, as his personal property, one (1) sidearm which was issued under authority of Section 45-3-19 or 41-29-159. Likewise, a beneficiary of any law enforcement officer killed in the line of duty shall be allowed to retain the officer's sidearm.

SOURCES: Laws, 1975, ch. 358; Laws, 1999, ch. 484, § 1; Laws, 2010, ch. 550, § 1, eff from and after passage (approved Apr. 28, 2010.)

Cross References — Marine patrol officers of Department of Marine Resources permitted to keep side arm upon retirement, see § 49-15-22.

§ 45-3-52. Retention by officers of assigned dogs retired from service.

A member of the Mississippi Highway Safety Patrol or any other certified law enforcement officer shall be allowed to retain as his personal property any dog assigned to such member when the dog is retired from service.

SOURCES: Laws, 2004, ch. 491, § 1, eff from and after July 1, 2004.

§ 45-3-53. Distinctive marker on cemetery memorials for Highway Safety Patrol officers killed in line of duty; markers for other officers.

(1) The Department of Public Safety shall place a distinctive marker on the cemetery memorial of each Mississippi Highway Safety Patrol officer who is killed in the performance of his or her official duties. The distinctive marker shall be designed by the Department of Public Safety with the advice and recommendation of the Mississippi State Troopers' Association.

(2) The funding for the distinctive markers shall be made from any funds appropriated by the Legislature to the Department of Public Safety or from any gifts, grants or donations received by the Department of Public Safety for the purpose of providing the distinctive markers.

(3) This section shall apply to all Mississippi Highway Safety Patrol officers who have given their lives in the performance of their official duties before and after July 1, 2000.

(4) Any Highway Safety Patrol officer may secure a distinctive marker as authorized in subsection (1) of this section if it is paid for with funds other than funds appropriated by the Legislature to the Department of Public Safety.

SOURCES: Laws, 2000, ch. 502, § 1, eff from and after July 1, 2000.

§ 45-3-55. Mississippi Highway Patrol Troop "D" substation named "Robert 'Bunky' Huggins Substation."

The Mississippi Highway Patrol Troop "D" substation located in the Greenwood, Mississippi, District, shall be named the "Robert 'Bunky' Huggins Substation." The Department of Public Safety shall place a distinctive plaque in a prominent place within the building, which states the background, accomplishments and service of the late Senator Robert "Bunky" Huggins to the State of Mississippi.

SOURCES: Laws, 2007, ch. 529, § 1, eff from and after passage (approved Apr. 18, 2007.)

§ 45-3-57. Mississippi Department of Public Safety's Highway Patrol District Office designated "Charles L. Young, Sr., District Office."

The Mississippi Department of Public Safety's Highway Patrol District Office, located in Meridian, Lauderdale County, Mississippi, which serves as the command center for Troop H of the Mississippi Highway Patrol, shall be named the "Charles L. Young, Sr., District Office." The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the building, that states the background, accomplishments and service to the state of the Honorable Charles L. Young, Sr. The Department of Finance and Administration in conjunction with the Mississippi Department of Public Safety's Highway Patrol Division shall erect or cause to be erected proper lettering or signage on the outdoor facade of the building displaying the official name of the building as the "Charles L. Young, Sr., District Office."

SOURCES: Laws, 2011, ch. 508, § 6, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 508, § 7, provides:
"SECTION 7. This act shall take effect and be in force from and after its passage, except for Sections 4, 5 and 6, which shall take effect and be in force from and after July 1, 2011."

CHAPTER 4

County Jail Officers Training Program

Sec.	
45-4-1.	Legislative findings and intent.
45-4-3.	Board on Jail Officer Standards and Training; creation; membership; officers; reports.
45-4-5.	Powers of board.
45-4-7.	Office of Standards and Training to provide administrative and fiscal support.
45-4-9.	Certification required for employment as jail officer; exemption for certain jail officers.
45-4-11.	Establishment, administration and maintenance of training programs; expenditure of funds.
45-4-13.	Governmental entities prohibited from paying salaries of uncertified jail officers.

§ 45-4-1. Legislative findings and intent.

The Legislature finds that the administration of jails and youth detention facilities is of statewide concern, and that the activities of jail officers are important to the health, safety and welfare of the people of this state and are of such nature as to require education and training of a professional nature of jail officers. It is the intent of the Legislature to provide for the coordination of training programs and the establishment of standards for jail officers.

SOURCES: Laws, 1999, ch. 482, § 1; Laws, 2000, ch. 515, § 4, eff from and after July 1, 2000.

Cross References — Law enforcement officers training academy, see §§ 45-5-1 et seq.

Law enforcement officers training program, see §§ 45-6-1 et seq.

ATTORNEY GENERAL OPINIONS

Any training completed by a jail officer employed by a regional correctional facility that is mandated by a court order or a contract between the regional correctional facility and the Mississippi Department of Corrections may be considered by the Board on Jail Officers Standards and Training (BJOST) in determining if the officer meets the minimum requirements set by the BJOST. Grimmett, Apr. 27, 2001, A.G. Op. #01-0226.

§ 45-4-3. Board on Jail Officer Standards and Training; creation; membership; officers; reports.

(1) There is hereby created the Board on Jail Officer Standards and Training, which shall consist of nine (9) members.

(2) The members shall be appointed as follows:

(a) Two (2) members to be appointed by the Mississippi Association of Supervisors.

(b) Three (3) members to be appointed by the Mississippi Association of Sheriffs.

(c) One (1) member to be appointed by the Mississippi Community College Board.

(d) One (1) member to be appointed by the Governor.

(e) One (1) member to be appointed by the Mississippi Association of Chiefs of Police.

(f) One (1) member to be appointed by the Mississippi Municipal League.

The initial appointments to the board shall be made no later than twenty (20) days after July 1, 1999, as follows:

The Mississippi Association of Supervisors shall appoint one (1) member for a term of one (1) year and one (1) member for a term of three (3) years.

The Mississippi Association of Sheriffs shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years and one (1) member for a term of three (3) years.

The Mississippi Community College Board shall appoint one (1) member for a term of two (2) years.

The Governor shall appoint one (1) member for a term of two (2) years.

The Mississippi Association of Chiefs of Police shall appoint one (1) member for a term of two (2) years not later than twenty (20) days after July 1, 2000.

The Mississippi Municipal League shall appoint one (1) member for a term of two (2) years not later than twenty (20) days after July 1, 2000.

Upon the expiration of the terms of the initial appointees to the board, each subsequent appointment shall be made for a term of three (3) years, beginning on the date of the expiration of the previous term. A vacancy in any appointed position on the board prior to the expiration of a term shall be filled by appointment for the balance of the unexpired term.

(3) Members of the board shall serve without compensation, but shall be entitled to receive reimbursement for any actual and reasonable expenses incurred as a necessary incident to such service, including mileage, as provided in Section 25-3-41, Mississippi Code of 1972.

(4) There shall be a chairman and a vice chairman of the board, elected by and from the membership of the board. The board shall adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business, but the board shall meet at least every three (3) months. Any member who is absent for three (3) consecutive regular meetings of the board may be removed by a majority vote of the board.

(5) The Governor shall call an organizational meeting of the board not later than thirty (30) days after July 1, 1999.

(6) The board shall report annually to the Governor and the Legislature on its activities, and may make such other reports as it deems desirable.

SOURCES: Laws, 1999, ch. 482, § 2; Laws, 2000, ch. 515, § 5; Laws, 2014, ch. 397, § 60, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" in (2)(c) and in the fourth undesignated paragraph in (f).

§ 45-4-5. Powers of board.

In addition to the powers conferred upon the Board on Jail Officer Standards and Training elsewhere in this chapter, the board shall have power to:

(a) Promulgate rules and regulations for the administration of this chapter including the authority to require the submission of reports and information by criminal justice departments.

(b) Establish minimum educational and training standards for employment or appointment as a jail officer or a part-time jail officer (i) in a permanent position, and (ii) in a probationary status.

(c) Certify persons as being qualified to be jail officers or part-time jail officers.

(d) Revoke certification for cause and in the manner provided in this chapter.

(e) Establish minimum curriculum requirements for basic and advanced courses and programs and continuing education for schools operated by or for the state community colleges, police departments, youth detention facilities or sheriffs' offices for the specific purpose of training jail officers.

(f) Consult and cooperate with counties, municipalities, state agencies, other governmental agencies, and with universities, colleges, junior colleges and other institutions concerning the development of training schools, programs or courses of instruction for jail officers.

(g) Make recommendations concerning any matter within its purview pursuant to this chapter.

(h) Make such inspection and evaluation as may be necessary to determine if agencies are complying with the provisions of this chapter.

(i) Approve jail officer training schools.

(j) Upon the request of sheriffs or chiefs of police, conduct surveys or aid agencies to conduct surveys through qualified public or private agencies and assist in the implementation of any recommendations resulting from such surveys.

(k) Upon request, conduct general and specific management surveys and studies of the operations of the requesting jails at no cost to those agencies. The role of the board under this subsection shall be that of management consultant.

(*l*) Adopt and amend regulations consistent with law, for its internal management and control of board programs.

(m) To apply for, receive and expend any federal, state or local funds or contributions, gifts, donations, grants or funds from any other source.

(n) Enter into contracts or do such things as may be necessary and incidental to the administration of this chapter.

SOURCES: Laws, 1999, ch. 482, § 3; Laws, 2000, ch. 515, § 6, eff from and after July 1, 2000.

§ 45-4-7. Office of Standards and Training to provide administrative and fiscal support.

The Office of Standards and Training shall provide administrative and fiscal support for the Board on Jail Officer Standards and Training on jail officer standards and training, and the Director of the Office of Standards and Training shall serve as the director of the board.

SOURCES: Laws, 1999, ch. 482, § 4; Laws, 2000, ch. 515, § 7, eff from and after July 1, 2000.

§ 45-4-9. Certification required for employment as jail officer; exemption for certain jail officers.

(1)(a) After January 1, 2000, no person shall be appointed or employed as a jail officer or a part-time jail officer unless that person has been certified as being qualified under subsection (3) of this section.

(b) No person who is required to be certified shall be appointed or employed as a jail officer by any sheriff or police department for a period to exceed two (2) years without being certified. The prohibition against the appointment or employment of a jail officer for a period not to exceed two (2) years may not be nullified by terminating the appointment or employment of such a person before the expiration of the time period and then rehiring the person for another period. Any person who, due to illness or other events beyond his control, as may be determined by the Board on jail Officer Standards and Training, does not attend the required school or training as scheduled, may serve with full pay and benefits in such a capacity until he can attend the required school or training.

(c) No person shall serve as a jail officer in any full-, part-time, reserve or auxiliary capacity during a period when that person's certification has been suspended, cancelled or recalled pursuant to this chapter.

(2) Jail officers serving under permanent appointment on January 1, 2000, shall not be required to meet certification requirements of this section as a condition of continued employment; nor shall failure of any such jail officer to fulfill such requirements make that person ineligible for any promotional examination for which that person is otherwise eligible. If any jail officer certified under this chapter leaves his employment and does not become employed as a jail officer within two (2) years from the date of termination of his prior employment, he shall be required to comply with board policy as to rehiring standards in order to be employed as a jail officer.

(3) In addition to the other requirements of this section, the Board on jail Officer Standards and Training, by rules and regulations consistent with other provisions of law, shall fix other qualifications for the employment of jail officers, including education, physical and mental standards, citizenship, good moral character, experience and such other matters as relate to the compe-

tence and reliability of persons to assume and discharge the responsibilities of jail officers, and the board shall prescribe the means for presenting evidence of fulfillment of these requirements. Additionally, the board shall fix qualifications for the appointment or employment of part-time jail officers to essentially the same standards and requirements as jail officers. The board shall develop and implement a part-time jail officer training program that meets the same performance objectives and has essentially the same or similar content as the programs approved by the board for full-time jail officers.

(4)(a) The Board on Jail Officer Standards and Training shall issue a certificate evidencing satisfaction of the requirements of subsections (1) and (3) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the board for approved jail officer education and training programs in this state.

(b) The Board on Jail Officer Standards and Training shall issue a certificate to any person who successfully completes the Mississippi Department of Corrections' training program for correctional officers of regional jails.

(c) The Board on Jail Officer Standards and Training shall develop and train persons seeking certification as a correctional officer in the prevention of racial profiling. The provisions of this paragraph shall apply to all recruits who begin training on or after January 1, 2005.

(5) Professional certificates remain the property of the board, and the board reserves the right to either reprimand the holder of a certificate, suspend a certificate upon conditions imposed by the board, or cancel and recall any certificate when:

(a) The certificate was issued by administrative error;

(b) The certificate was obtained through misrepresentation or fraud;

(c) The holder has been convicted of any crime involving moral turpitude;

(d) The holder has been convicted of a felony; or

(e) Other due cause as determined by the board.

(6) When the board believes there is a reasonable basis for either the reprimand, suspension, cancellation of, or recalling the certification of a jail officer, notice and opportunity for a hearing shall be provided in accordance with law prior to such reprimand, suspension or revocation.

(7) Any jail officer aggrieved by the final findings and order of the board may file an appeal with the chancery court of the county in which the person is employed. The appeal must be filed within thirty (30) days of the final order.

(8) Any jail officer whose certification has been cancelled may reapply for certification, but not sooner than two (2) years after the date on which the order canceling the certification becomes final.

SOURCES: Laws, 1999, ch. 482, § 5; Laws, 2000, ch. 515, § 8; Laws, 2004, ch. 556, § 1, eff from and after passage (approved May 13, 2004.)

§ 45-4-11. Establishment, administration and maintenance of training programs; expenditure of funds.

(1) The Board on Jail Officer Standards and Training shall establish, provide or maintain jail officer training programs through such agencies and institutions as the board may deem appropriate.

(2) The board shall authorize, but only from such funds authorized and appropriated by the Legislature, the reimbursement to each governmental entity of at least fifty percent (50%) of the allowable salary and allowable tuition, living and travel expense incurred by jail officers in attendance at approved training programs, if the governmental entity does in fact adhere to the training standards established by the board. The board shall authorize, but only from such funds authorized and appropriated by the Legislature, the direct funding of a part-time jail officer training program. The board shall require the payment of a reasonable tuition fee to aid in funding the costs of administering the part-time jail officer training program.

(3) The board is authorized to expend funds for the purpose of providing a professional library and training aids that will be available to police and sheriff departments.

(4) If any jail officer in this state who is employed by a county shall, within three (3) years after the date of his employment, resign from, or be terminated from, employment by such county and immediately become employed by another governmental entity in a jail officer capacity, then the governmental entity by which the resigned or terminated officer is employed shall reimburse the county from which the officer resigned or was terminated a proportionate share of the jail officer's training expenses which were incurred by such entity, if any.

SOURCES: Laws, 1999, ch. 482, § 6; Laws, 2000, ch. 515, § 9, eff from and after July 1, 2000.

§ 45-4-13. Governmental entities prohibited from paying salaries of uncertified jail officers.

Any governmental entity that employs a person as a jail officer who does not meet the requirements of this chapter, or who employs a person whose certificate has been suspended or revoked under provisions of this chapter, is prohibited from paying the salary of such person, or providing any public monies for the equipment or support of the jail duties of such person and any person violating this subsection shall be personally liable for making such payment.

SOURCES: Laws, 1999, ch. 482, § 7; Laws, 2000, ch. 515, § 10, eff from and after July 1, 2000.

CHAPTER 5

Law Enforcement Officers' Training Academy

Sec.
45-5-1. Citation of chapter.
45-5-3. Public policy declared.
45-5-5. Establishment, supervision and purpose of law enforcement officers' training academy; rules and regulations; director and other personnel.
45-5-7. Instructors and curriculum.
45-5-9. Sheriffs and mayors may appoint extra deputies and police; commissioner of public safety to judge qualifications of applicant; powers and duties of deputies; compensation and uniforms; bond.
45-5-11. Appropriations; tuition fees; payment of expenses of officers attending academy; grants and donations may be accepted.
45-5-13. Acceptance or rejection of applicants by director; appeals by rejected applicants.
45-5-15. Duties of State Building Commission; law enforcement officers' training academy fund.
45-5-17. Construction of chapter.

§ 45-5-1. Citation of chapter.

This chapter may be cited as "The Mississippi Law Enforcement Officers' Training Academy Law of 1964."

SOURCES: Codes, 1942, § 8086-01; Laws, 1964, ch. 324, § 1, eff from and after passage (approved May 22, 1964).

Cross References — County jail officers training program, see §§ 45-4-1 et seq.
Law enforcement officers training program, see §§ 45-6-1 et seq.

§ 45-5-3. Public policy declared.

It is hereby declared that the state public welfare demands and the state public policy requires proper and adequate preservation of the domestic tranquility by the presence of sufficiently trained law enforcement officers on local and state levels; that the means and measures herein authorized to insure the welfare of all the citizens of the state of Mississippi are as a matter of public policy for the purpose of insuring the domestic tranquility; and that the accomplishment of the things herein authorized will preserve the present and prospective safety, morals, pursuit of happiness and general welfare of citizens of the state of Mississippi.

SOURCES: Codes, 1942, § 8086-02; Laws, § 1964, ch. 324, § 2, eff from and after passage (approved May 22, 1964).

§ 45-5-5. Establishment, supervision and purpose of law enforcement officers' training academy; rules and regulations; director and other personnel.

The commissioner of public safety is hereby authorized and empowered to establish, maintain and supervise a "law enforcement officers' training academy" for the purpose of providing training facilities for members of the department of public safety and such other law enforcement officers of the state, counties or municipalities as may schedule the use of the same with the commissioner.

The commissioner shall promulgate such reasonable rules and regulations as are necessary; provided, however, that any such rules and regulations shall be published and kept on file in the office of the commissioner and in the administrative office of the academy. To carry out the provisions of this chapter and any such rules and regulations, the commissioner shall appoint a director who shall answer to the commissioner in the performance of his duties. The commissioner shall employ such other technical, professional and clerical assistance as may be required from time to time, and fix their duties and compensation. All employees and other personnel must be qualified by education and experience.

SOURCES: Codes, 1942, § 8086-03; Laws, 1964, ch. 324, § 3, eff from and after passage (approved May 22, 1964).

§ 45-5-7. Instructors and curriculum.

The commissioner may furnish suitable instructors in the subject matter fields to be taught by assigning members of the Mississippi Highway Safety Patrol or by calling upon other agencies, departments, institutions or private individuals to provide competent instructors in their respective fields. In the alternative, the requesting authority may specify in its request that only the facilities be made available, the instructors being furnished by the requesting authority.

The curriculum of the academy shall be as prescribed by the commissioner; provided, however, that upon requesting the use of the academy the requesting authority may also request a particular course of instruction if the same be available.

SOURCES: Codes, 1942, § 8086-04; Laws, 1964, ch. 324, § 4, eff from and after passage (approved May 22, 1964).

Cross References — Personnel charged with enforcement of weight and tax laws required to complete course of instruction established pursuant to this section, see § 65-1-44.

§ 45-5-9. Sheriffs and mayors may appoint extra deputies and police; commissioner of public safety to judge qualifications of applicant; powers and duties of deputies; compensation and uniforms; bond.

The sheriff of each county, and the mayor of each municipality, is hereby authorized and empowered to appoint as many extra deputy sheriffs and as many extra deputy police officers, as the case may be, as he deems necessary for the purposes herein. Each applicant to the academy herein created shall be subject to approval by the Commissioner of Public Safety who shall be the sole judge of the qualifications of such applicant, and when deemed necessary for the purposes herein, the sheriff and mayor, as the case may be, shall have the power and authority to order said deputies to perform any of the duties required under this chapter, and all such deputies ordered to do so shall have the full power and authority so to do as is vested in other police or peace officers of this state. Such deputies shall be paid for services rendered such compensation and may be furnished such uniforms and equipment as may be agreed upon by the sheriff with approval of the board of supervisors, and by the mayor, with the approval of the governing authorities of such municipality, same to be paid from any available county funds, and/or any available municipal funds, as the case may be. Each such deputy shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty not less than Fifty Thousand Dollars ($50,000.00). The premiums for such bonds shall be paid from any available county funds or any available municipal funds, as the case may be.

SOURCES: Codes, 1942, § 8086-05; Laws, 1964, ch. 324, § 5; Laws, 1986, ch. 458, § 38; Laws, 2009, ch. 467, § 16, eff from and after July 1, 2009.

Editor's Note — Laws of 1986, ch. 458, § 38, provided that § 45-5-9 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws of 1986, by deleting the date for repeal.

Cross References — Sheriffs, generally, see §§ 19-25-1 et seq.

Powers and duties of mayor, generally, see §§ 21-3-15, 21-5-7.

Power of mayor to call on citizens for aid in enforcing the law, see § 21-15-13.

Duties of marshal or chief of police, see § 21-21-1.

Authority of municipalities to employ police and night marshals, see § 21-21-3.

Power of municipalities to pay training school expenses for police, see § 21-21-7.

ATTORNEY GENERAL OPINIONS

Part-time deputy sheriff is clothed with same power and authority to perform any act that any full-time deputy sheriff of county could lawfully perform while such part-time deputy is on duty. Bradford, Oct. 14, 1992, A.G. Op. #92-0799.

Mayor has authority to appoint extra deputy police officers and that any compensation is subject to approval by Board of Aldermen. Hatcher Nov. 19, 1993, A.G. Op. #93-0736.

Whether police officer or extra deputy police officer works full time or part time is administrative decision. Hatcher Nov. 19, 1993, A.G. Op. #93-0736.

Section 45-5-9 only applies to "extra

deputies" and not to regularly appointed, full-time deputies as set forth in Section 19-25-19. McWilliams, June 21, 1996, A.G. Op. #96-0376.

Regular deputies appointed under Section 19-25-19 do not need to post bond unless required to do so by the sheriff under Section 19-25-13. With the exception of the bond requirements of Section 19-25-13, only those deputies appointed under Section 45-5-9 and designated as "extra deputies" are statutorily mandated to be bonded. McWilliams, June 21, 1996, A.G. Op. #96-0376.

A sheriff has the authority under Miss. Code Section 45-5-9 to appoint volunteers to serve as deputies for the purpose of performing tasks assigned to them. Gamble, Aug. 1, 1997, A.G. Op. #97-0461.

The mayor may appoint extra deputy police officers pursuant to the statute, but any compensation is subject to approval by the board of aldermen. Gerhart, Mar. 8, 2002, A.G. Op. #02-0056.

A police officer appointed by the mayor pursuant to this section must have his pay specifically approved by the Board of Alderman. A line item in an existing budget for police officers who are hired by the Board of Alderman does not constitute "approval of the governing authorities of such municipalities." Tanner, Aug. 22, 2003, A.G. Op. 03-0442.

§ 45-5-11. Appropriations; tuition fees; payment of expenses of officers attending academy; grants and donations may be accepted.

The Legislature may appropriate funds to carry out the purposes of this chapter in whole or in part. The commissioner shall establish and charge reasonable tuition fees to be paid. Any municipality, county, district or other political subdivision or agency of the state is hereby authorized to pay the expenses, including tuition of any of its officers or officer-designees or officers-elect for attending the academy. All municipalities, counties, districts, other political subdivisions and agencies of the state shall comply with subsection (4) of Section 45-6-13 in the event that an officer leaves one governmental entity and becomes employed by another governmental entity within three (3) years. Grants and donations to the academy may be accepted from individuals, firms, corporations, foundations and other interested organizations and societies.

SOURCES: Codes, 1942, § 8086-06; Laws, 1964, ch. 324, § 6; Laws, 1993, ch. 458, § 2, eff from and after July 1, 1993.

Cross References — Power of municipalities to pay training school expenses for police, see § 21-21-7.

ATTORNEY GENERAL OPINIONS

The Highway Patrol Training Academy has no authority to charge for meals and lodging if a participant does not partake of same Tedder, Nov. 27, 1991, A.G. Op. #91-0885.

A newly elected County Medical Examiner or Coroner is authorized, as an "officer-elect", to attend a course before being sworn in and also to have his tuition and expenses paid. Tedder, Nov. 27, 1991, A.G. Op. #91-0885.

A deputy coroner must be appointed jointly by the board of supervisors and the county medical examiner; since such appointment cannot be made until the next term, the deputy coroner's tuition and expenses could not be paid until he actually takes office or is appointed. Tedder, Nov. 27, 1991, A.G. Op. #91-0885.

§ 45-5-13. Acceptance or rejection of applicants by director; appeals by rejected applicants.

The director, with the approval of the commissioner, shall have the power and authority to accept or reject any group or individual. If an individual or group is rejected by the director, he or they may by written request appeal to a reviewing board made up of the commissioner of public safety, who will be presiding officer; the attorney general of the state; and the secretary of state. This board will have final authority on rejection or approval of applicants who have appealed to the board.

SOURCES: Codes, 1942, § 8086-07; Laws, 1964, ch. 324, § 7, eff from and after passage (approved May 22, 1964).

Cross References — Duties of Secretary of State, generally, see § 7-3-5.
Attorney General, generally, see §§ 7-5-1 et seq.
Power of sheriffs and mayors to appoint extra deputies and police, see § 45-5-9.

ATTORNEY GENERAL OPINIONS

Section 45-5-13, gives the Director of the Law Enforcement Officers Training Academy and the Commissioner of Public Safety the authority to reject applicants to the Training Academy based on a felony conviction. May, October 16, 1995, A.G. Op. #95-0654.

§ 45-5-15. Duties of State Building Commission; law enforcement officers' training academy fund.

The State Building Commission is authorized and directed to provide suitable land, either state owned or purchased for the purpose of this chapter or received as a gift, and buildings to house the law enforcement training academy, and payment for the construction costs of such buildings shall be made from any money made available to carry out the provisions of this chapter. Any funds appropriated or granted from any source shall be put in a fund in the office of the treasurer to be designated as the "law enforcement officers' training academy fund."

SOURCES: Codes, 1942, § 8086-08; Laws, 1964, ch. 324, § 8, eff from and after passage (approved May 22, 1964).

Cross References — State building commission, as meaning office of general services, see § 31-11-3.

§ 45-5-17. Construction of chapter.

This chapter shall be construed as supplemental and in addition to the present laws governing the department of public safety; provided, however, whenever a conflict exists between this chapter and any of said present laws the provisions of this chapter will control.

SOURCES: Codes, 1942, § 8086-09; Laws, 1964, ch. 324, § 13, eff from and after passage (approved May 22, 1964).

CHAPTER 6

Law Enforcement Officers Training Program

Sec.
45-6-1. Legislative findings and intent.
45-6-3. Definitions.
45-6-5. Board on Law Enforcement Officer Standards and Training created; appointment, terms of office, removal from office and compensation of members; officers; meetings; reports; advisors.
45-6-7. Powers of board.
45-6-9. Administrative and fiscal support provided by criminal justice planning commission.
45-6-11. Law enforcement officer qualifications; recertification after leaving law enforcement; certification; reprimand, suspension or revocation of certification.
45-6-13. Reimbursement for attending training program; professional library.
45-6-15. Law Enforcement Officers Training Fund.
45-6-17. Noncomplying officers and officers with certificates revoked or suspended not to exercise powers; salary not to be paid.
45-6-19. Continuing education requirement for municipal police chiefs and officers.
45-6-21. Motorcycle Officers Training Program Fund created.

§ 45-6-1. Legislative findings and intent.

The Legislature finds that the administration of criminal justice is of statewide concern, and that the activities of law enforcement officers are important to the health, safety and welfare of the people of this state and are of such nature as to require selection, education and training of a professional nature upon entrance and during the careers of law enforcement officers. It is the intent of the Legislature to provide for the coordination of training programs for law enforcement officers and to set standards therefor.

SOURCES: Laws, 1981, ch. 474, § 1; Laws, 1998, ch. 394, § 1, eff from and after July 1, 1998.

Cross References — County jail officers training program, see §§ 45-4-1 et seq.

Law enforcement officers' training academy, see §§ 45-5-1 et seq.

ATTORNEY GENERAL OPINIONS

There is no requirement under Miss. Code Sections 45-6-1 et seq. that jailer also be deputy law enforcement officer. Tompkins, Jan. 14, 1993, A.G. Op. #92-0902.

As long as municipal auxiliary officers are not full time employees, then minimum training standards required under Section 45-6-1 et seq. do not apply; question of how much training he or she receives is left to sound discretion of governing authorities of municipality. Carlisle Oct. 22, 1993, A.G. Op. #93-0678.

§ 45-6-3. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein, unless the context shall otherwise require:

(a) "Commission" means the Criminal Justice Planning Commission.

(b) "Board" means the Board on Law Enforcement Officer Standards and Training.

(c) "Law enforcement officer" means any person appointed or employed full time by the state or any political subdivision thereof, or by the state military department as provided in Section 33-1-33, who is duly sworn and vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of the criminal and traffic laws of this state and/or the ordinances of any political subdivision thereof. The term "law enforcement officer" also includes employees of the Department of Corrections who are designated as law enforcement officers by the Commissioner of Corrections pursuant to Section 47-5-54, and includes those district attorney criminal investigators who are designated as law enforcement officers. However, the term "law enforcement officer" shall not mean or include any elected official or any person employed as a legal assistant to a district attorney in this state, compliance agents of the State Board of Pharmacy, or any person or elected official who, subject to approval by the board, provides some criminal justice related services for a law enforcement agency. As used in this paragraph, "appointed or employed full time" means any person who is receiving gross compensation for his duties as a law enforcement officer of Two Hundred Fifty Dollars ($250.00) or more per week or One Thousand Seventy-five Dollars ($1,075.00) or more per month.

(d) "Part-time law enforcement officer" shall mean any person appointed or employed in a part-time, reserve or auxiliary capacity by the state or any political subdivision thereof who is duly sworn and vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of the criminal and traffic laws of this state or the ordinances of any political subdivision thereof. However, the term "part-time law enforcement officer" shall not mean or include any person or elected official who, subject to approval by the board, provides some criminal justice related services for a law enforcement agency. As used in this paragraph, "appointed or employed" means any person who is performing such duties at any time whether or not they receive any compensation for duties as a law enforcement officer provided that such compensation is less than Two Hundred Fifty Dollars ($250.00) per week or One Thousand Seventy-five Dollars ($1,075.00) per month.

(e) "Law enforcement trainee" shall mean any person appointed or employed in a full-time, part-time, reserve or auxiliary capacity by the state or any political subdivision thereof for the purposes of completing all the selection and training requirements established by the board to become a law enforcement officer or a part-time law enforcement officer. Such individuals shall not have the authority to use force, bear arms, make arrests or exercise any of the powers of a peace officer unless:

(i) The trainee is under the direct control and supervision of a law enforcement officer;

(ii) The trainee was previously certified under this chapter; or

(iii) The trainee is a certified law enforcement officer in a reciprocating state.

SOURCES: Laws, 1981, ch. 474, § 2; Laws, 1990, ch. 434, § 1; Laws, 1992, ch. 531, § 8; Laws, 1993, ch. 416, § 29; Laws, 1996, ch. 422, § 2; Laws, 1998, ch. 394, § 2; Laws, 2003, ch. 490, § 2; Laws, 2004, ch. 388, § 1; Laws, 2007, ch. 510, § 1, eff from and after July 1, 2007.

Cross References — Attorney General's office Medicaid Fraud Control Unit investigators as law enforcement officers, see § 43-13-221.

Exemption from requirement for license for carrying concealed pistol or revolver, see § 45-9-101.

Employees of Department of Corrections having status as law enforcement officers under this section, see § 47-5-54.

JUDICIAL DECISIONS

1. In general.

In a prosecution for simple assault upon a law enforcement officer, the trial court did not err in finding that the victim was a "law enforcement officer" acting within the scope of his duties at the time of the offense, even though he had not attended the law enforcement training academy as required by § 45-6-3(c), since he was a "de jure deputy sheriff" where he was appointed by the sheriff pursuant to § 19-25-19 to act as a jailer, and he was wearing a signed identification card and a uniform at the time of the offense. Amerson v. State, 648 So. 2d 58 (Miss. 1994).

Section 45-6-3(c), which establishes the requirements for training of law enforcement officers who have been given traditional law enforcement duties, was not applicable in a prosecution for simple assault upon a law enforcement officer in which the defendant contended that the victim was not a "law enforcement officer" within the meaning of § 97-3-7 because he had not attended the training academy as required by § 45-6-3(c). Amerson v. State, 648 So. 2d 58 (Miss. 1994).

A capital murder indictment charging the defendant with the killing of a police officer "while acting in his official capacity ...with knowledge that the victim was a peace officer" was not defective, despite the defendant's argument that the victim was not authorized to exercise the powers of an officer pursuant to § 45-6-11 because he had one year from the date he became employed as a law enforcement officer to obtain his certification from the State of Mississippi Board on Law Enforcement Standards and Training and the victim did not have this certification though he had been employed by the police department for 14 months, where the victim had been a part time police officer until 3 or 4 months prior to his death when he had become full time, and therefore he had 8 or 9 months until certification was necessary since he met the definition of a law enforcement officer for only 3 or 4 months in accordance with § 45-6-3(c), which defines a law enforcement officer as "any person appointed or employed full time by the State or any political subdivision thereof ..." (emphasis added). Green v. State, 614 So. 2d 926 (Miss. 1992).

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Any law enforcement officer who has had certificate suspended, canceled or recalled may not work, even on part-time basis, but prohibition of § 45-6-11 as to part-time work does not apply to person who never had certificate or who has one that has not been suspended, canceled or recalled. Gregory, July 14, 1993, A.G. Op. #93-0418.

Deputy sheriff who is performing law enforcement duties as defined in Section 45-6-3(c) is considered law enforcement officer for purposes of Section 45-6-13. Whitmore, March 3, 1994, A.G. Op. #93-0932.

The town marshal must be certified by the Board of Law Enforcement Officers Standards and Training if he is a "full time law enforcement officer" under 45-6-3 or he may be grandfathered under Section 45-6-11(1). Smith, August 23, 1995, A.G. Op. #95-0564.

An Animal Control Officer, who also issues parking tickets, is required by state law to attend the police academy, as are other police officers who are employed by the City Police Department, if that employee meets the definition of law enforcement officer found at Section 45-6-3. Peeples, September 27, 1995, A.G. Op. #95-0617.

An employee who makes $6.49 an hour may work up to 19 hours per week or 77 hours per month as a law enforcement officer without being classified a full time law enforcement officer. Booth, Aug. 1, 1997, A.G. Op. #97-0456.

The statute allows a law enforcement agency to hire an individual to perform criminal justice related services, such as service of process, without giving that individual full law enforcement authority. Simmons, August 28, 1998, A.G. Op. #98-0505.

A noncompensated special contract agent with the Mississippi Bureau of Narcotics meets the definition of "part-time law enforcement officer" within the meaning of the statute. Jones, September 29, 1998, A.G. Op. #98-0512.

The Board of Levee Commissioners for the Yazoo-Mississippi Delta does not have the lawful authority to establish and maintain independently of any other law enforcement agency a department charged with the enforcement of law in respect to the levee over which it has responsibility. Chaffin, July 9, 1999, A.G. Op. #99-0336.

As long as a county board of supervisors specifies that an individual will receive less than $500.00 per month for law enforcement duties performed during a month and any other amount of compensation will be as a result of his administrative duties, the officer may be classified as part-time. Munn, Aug. 31, 2001, A.G. Op. #01-0528.

The cumulative total compensation paid to a part-time law enforcement officer from all political subdivisions must be less than $500.00 per month; thus, the governing authorities of a political subdivision may not pay a part-time law enforcement officer an amount that would cause the officer's compensation to exceed the statutory limit, but any compensation received by the part-time law enforcement officer from sources other than a political subdivision are not counted against the statutory limit. Hatcher, Feb. 8, 2002, A.G. Op. #02-0018.

If a law enforcement officer has completed the required training and has been certified by the Board on Law Enforcement Standards and Training, he has the authority to exercise all of the powers and duties of a law enforcement officer, regardless of the compensation he receives; however, if the individual has not completed the required training he would be considered a law enforcement trainee and could only exercise the law enforcement authority if he were under the control and supervision of a properly trained officer. Pitts, Apr. 26, 2002, A.G. Op. #02-0197.

A constable may not work as a municipal police officer under the constable's training certificate. Stone, May 2, 2003, A.G. Op. 03-0201.

A law enforcement trainee does not have the authority to use force, bear arms, make arrests or exercise any of the powers of a peace officer unless under the direct control and supervision of a law enforcement officer that has been certified. Stone, May 2, 2003, A.G. Op. 03-0201.

A police officer of a municipality must be sworn before assuming any law enforcement duties, however, there is no requirement that a police officer must be sworn in by the Mayor or Vice-Mayor; a municipal court judge is the 'police justice' of a municipality and, therefore, could administer the oath of office. Thomas, May 9, 2003, A.G. Op. 03-0212.

There is no prohibition against a part time law enforcement officer serving as a police chief, or in another supervisory capacity in which he or she will supervise full time law enforcement officers. Jones, July 7, 2004, A.G. Op. 04-0288.

The term "under the direct control and supervision of a law enforcement officer" mean that a law enforcement trainee must have some on-site or on-location supervision by a certified law enforcement officer. Miller, Aug. 19, 2004, A.G. Op. 04-0388.

A non-certified law enforcement trainee has the same power and authority as a law enforcement officer while they are under the direct control and supervision of a certified law enforcement officer. Miller, Aug. 19, 2004, A.G. Op. 04-0388.

A non-certified law enforcement trainee who has personal knowledge of a crime may make an affidavit to such effect and present it to a judge. This would include information concerning traffic violations. However, any warrant that might be issued by the judge would only be able to be served by the law enforcement trainee if he were under the direct control and supervision of a certified officer. Miller, Aug. 19, 2004, A.G. Op. 04-0388.

A non-certified law enforcement trainee has the same power and authority as a law enforcement officer while under the direct control and supervision of a certified law enforcement officer. Sanders, Dec. 9, 2005, A.G. Op. 05-0587.

Authority to hire, fire, set compensation, and define duties of municipal employees rests solely with the board of aldermen, subject to mayoral veto power. Whether a part-time police chief is sufficient to satisfy the municipality's statutory duty to provide police protection is a factual determination to be made by the governing authority. If a municipality does not have a police chief, the board of aldermen must appoint one. An untrained part-time police officer is a law enforcement trainee who must be supervised by a certified officer and has two years from hiring to become certified. McLain, March 2, 2007, A.G. Op. #07-00069, 2007 Miss. AG LEXIS 82.

§ 45-6-5. Board on Law Enforcement Officer Standards and Training created; appointment, terms of office, removal from office and compensation of members; officers; meetings; reports; advisors.

(1) There is hereby created the Board on Law Enforcement Officer Standards and Training, which shall consist of thirteen (13) members.

(2)(a) The Governor shall appoint six (6) members of the board from the following specified categories:

(i) Two (2) members, each of whom is a chief of police of a municipality in this state, with one (1) of the appointees being appointed from a municipality having a population of less than five thousand (5,000) according to the latest federal decennial census.

(ii) One (1) member who is a sheriff in this state.

(iii) One (1) member who is a district attorney in this state.

(iv) One (1) member who is a representative of higher education and who has a degree in one (1) of the following areas of study: corrections, criminal justice or public administration.

(v) One (1) member who is a nonsupervisory rank-and-file law enforcement officer.

(b) The initial appointments to the board shall be made by the Governor no later than twenty (20) days after April 7, 1981, as follows: the chief of police and the representative of higher education each shall be appointed for a term of two (2) years; and the sheriff and the district attorney each shall be appointed for a term of three (3) years. Upon the expiration of the terms of the initial appointees to the board, each subsequent appointment shall be made for a term of three (3) years, beginning on the date of the expiration of the previous term. A vacancy in any appointed position on the board prior to the expiration of a term shall be filled by appointment of the Governor only for the balance of the unexpired term. Appointments shall be made within sixty (60) days of the occurrence of the vacancy.

(c) Any member appointed under this subsection who fails to attend three (3) consecutive meetings of the board shall be subject to removal by the Governor. The president of the board shall notify the Governor in writing when a member has failed to attend three (3) consecutive regular meetings.

(3) The remaining seven (7) members of the board shall be the following:

(a) The Attorney General, or his designee.

(b) The Director of the Mississippi Highway Safety Patrol, or his designee.

(c) The President of the Mississippi Municipal Association, or his designee who is a member of the association.

(d) The President of the Mississippi Association of Supervisors, or his designee who is a member of the association.

(e) The President of the Mississippi Constable Association, or his designee who is a member of the association.

(f) The President of the Mississippi Campus Law Enforcement Officers Association, or his designee who is a member of the association.

(g) The President of the Mississippi Sheriffs' Association, or his designee who is a member of the association.

The Attorney General, the Director of the Mississippi Highway Safety Patrol and the respective presidents of the foregoing associations, or their designees, shall serve only for their respective terms of office.

(4) Members of the board shall serve without compensation, but shall be entitled to receive reimbursement for any actual and reasonable expenses incurred as a necessary incident to such service, including mileage, as provided in Section 25-3-41.

(5) There shall be a chairman and a vice chairman of the board, elected by and from the membership of the board. The board shall adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business, but the board shall meet at least every three (3) months.

(6) The Governor shall call an organizational meeting of the board not later than thirty (30) days after April 7, 1981.

(7) If a person appointed to the board no longer occupies the status qualifying that person's appointment, that position on the board shall be immediately vacated and filled ex officio or by appointment of the Governor as otherwise provided in this section.

(8) The board shall report annually to the Governor and the Legislature on its activities, and may make such other reports as it deems desirable.

(9) The training officers of all police academies in the state whose curricula are approved by the board shall be advisors to the board. They shall be entitled to all privileges of the board members, including travel expenses and subsistence, but shall not be eligible to vote at board meetings.

SOURCES: Laws, 1981, ch. 474, § 3; Laws, 1991, ch. 596, § 1; Laws, 2008, ch. 480, § 2; Laws, 2010, ch. 515, § 1, eff from and after July 1, 2010.

ATTORNEY GENERAL OPINIONS

The Board of Law Enforcement Standards and Training requires full-time law enforcement officers to be twenty-one years of age, but a person may serve in a part-time or auxiliary capacity prior to their twenty-first birthday. Pickens, July 3, 1997, A.G. Op. #97-0365.

§ 45-6-7. Powers of board.

In addition to the powers conferred upon the board elsewhere in this chapter, the board shall have power to:

(a) Promulgate rules and regulations for the administration of this chapter, including the authority to require the submission of reports and information by law enforcement agencies of the state and its political subdivisions.

(b) Establish minimum educational and training standards for admission to employment or appointment as a law enforcement officer or a part-time law enforcement officer: (i) in a permanent position; and (ii) in a probationary status.

(c) Certify persons as being qualified under the provisions of this chapter to be law enforcement officers or part-time law enforcement officers.

(d) Revoke certification for cause and in the manner provided in this chapter. The board is authorized to subpoena documents regarding revocations. The board shall maintain a current list of all persons certified under this chapter who have been placed on probation, suspended, subjected to revocation of certification, or any combination of these.

(e) Establish minimum curriculum requirements for basic and advanced courses and programs for schools operated by or for the state or any political subdivision thereof for the specific purpose of training police and other law enforcement officers, both full- and part-time.

(f) Consult and cooperate with counties, municipalities, state agencies, other governmental agencies, and with universities, colleges, community and junior colleges and other institutions concerning the development of training schools, programs or courses of instruction for personnel defined in this chapter.

(g) Make recommendations concerning any matter within its purview pursuant to this chapter.

(h) Make such inspection and evaluation as may be necessary to determine if governmental units are complying with the provisions of this chapter.

(i) Approve law enforcement officer training schools for operation by or for the state or any political subdivision thereof for the specific purpose of training personnel defined in this chapter.

(j) Upon the request of agencies employing personnel defined in this chapter, conduct surveys or aid municipalities and counties to conduct surveys through qualified public or private agencies and assist in the implementation of any recommendations resulting from such surveys.

(k) Upon request of agencies within the purview of this chapter, conduct general and specific management surveys and studies of the operations of the requesting agencies at no cost to those agencies. The role of the board under this subsection shall be that of management consultant.

(*l*) Adopt and amend regulations consistent with law, for its internal management and control of board programs.

(m) Enter into contracts or do such things as may be necessary and incidental to the administration of this chapter.

(n) Establish jointly with the State Board of Education the minimum level of basic law enforcement training required of persons employed by school districts as school security guards, or school resource officers or in other positions that have the powers of a peace officer.

SOURCES: Laws, 1981, ch. 474, § 4; Laws, 1990, ch. 434, § 2; Laws, 1998, ch. 394, § 6; Laws, 2000, ch. 437, § 2; Laws, 2009, ch. 539, § 1, eff from and after passage (approved Apr. 15, 2009.)

Cross References — Law enforcement officers training academy, see §§ 45-5-1 et seq.

JUDICIAL DECISIONS

1. Full-time certification.

Substantial evidence supported the decision of the Mississippi Board on Law Enforcement Officer Standards and Training to deny officers' applications to be certified as full-time law enforcement officers because the officers did not meet the minimum standards under the Board's long-standing policy for full-time certification. Miss. Dep't of Pub. Safety v. Holden, — So. 3d —, 2014 Miss. App. LEXIS 233 (Miss. Ct. App. Apr. 29, 2014).

Decision of the Mississippi Board on Law Enforcement Officer Standards and Training to deny officers' applications to be certified as full-time law enforcement officers was not arbitrary or capricious because Board's action was consistent with the Board's policy of how an applicant became certified full-time; the plain language of the statute authorizes, but does not require, that every applicant meeting the two requirements be certified as full-time. Miss. Dep't of Pub. Safety v. Holden, — So. 3d —, 2014 Miss. App. LEXIS 233 (Miss. Ct. App. Apr. 29, 2014).

Decision of the Mississippi Board on Law Enforcement Officer Standards and Training to deny officers' applications to be certified as full-time law enforcement officers was not arbitrary or capricious because the plain and unambiguous language of the statute, and the use of the term "may," gave the Board discretion to deny full-time certification for the officers, even if they had the requisite twenty-five years of law enforcement experience and received certification as part-time officers.

Miss. Dep't of Pub. Safety v. Holden, — So. 3d —, 2014 Miss. App. LEXIS 233 (Miss. Ct. App. Apr. 29, 2014).

ATTORNEY GENERAL OPINIONS

If a law enforcement officer who was certified prior to March 11, 2004 and who participated in a pretrial diversion program prior to that date is later laterally transferred from one law enforcement agency to another, the officer may not be denied transfer of certification to the new agency because of a March 11, 2004 change in the Professional Certification Policy of the Mississippi Board of Law Enforcement Officer Standards and Training. Davis, March 30, 2007, A.G. Op. #07-00148, 2007 Miss. AG LEXIS 66.

§ 45-6-9. Administrative and fiscal support provided by criminal justice planning commission.

The criminal justice planning commission shall provide administrative and fiscal support for the board on law enforcement officer standards and training, and the executive director of the commission shall serve as the director of the board.

SOURCES: Laws, 1981, ch. 474, § 5, eff from and after passage (approved April 7, 1981).

Cross References — Provision that constables must complete law enforcement curricula at the Mississippi Law Enforcement Officers' Training Academy or such other police academies that are approved pursuant to this section, see § 19-19-5.

Transfer of Office of Criminal Justice Planning including Juvenile Justice Advisory Committee to Department of Public Safety, see § 45-1-33.

§ 45-6-11. Law enforcement officer qualifications; recertification after leaving law enforcement; certification; reprimand, suspension or revocation of certification.

(1) Law enforcement officers already serving under permanent appointment on July 1, 1981, and personnel of the Division of Community Services under Section 47-7-9, Mississippi Code of 1972, serving on July 1, 1994, shall not be required to meet any requirement of subsections (3) and (4) of this section as a condition of continued employment; nor shall failure of any such law enforcement officer to fulfill such requirements make that person ineligible for any promotional examination for which that person is otherwise eligible. Provided, however, if any law enforcement officer certified under the provisions of this chapter leaves his employment as such and does not become employed as a law enforcement officer within two (2) years from the date of termination of his prior employment, he shall be required to comply with board policy as to rehiring standards in order to be employed as a law enforcement officer; except, that, if any law enforcement officer certified under this chapter leaves his employment as such to serve as a sheriff, he may be employed as a law enforcement officer after he has completed his service as a sheriff without

being required to comply with board policy as to rehiring standards. Part-time law enforcement officers serving on or before July 1, 1998, shall have until July 1, 2001, to obtain certification as a part-time officer.

(2)(a) Any person who has twenty (20) years of law enforcement experience and who is eligible to be certified under this section shall be eligible for recertification after leaving law enforcement on the same basis as someone who has taken the basic training course. Application to the board to qualify under this paragraph shall be made no later than June 30, 1993.

(b) Any person who has twenty-five (25) years of law enforcement experience, whether as a part-time, full-time, reserve or auxiliary officer, and who has received certification as a part-time officer, may be certified as a law enforcement officer as defined in Section 45-6-3(c) without having to meet further requirements. Application to the board to qualify under this paragraph shall be made no later than June 30, 2009.

(3)(a) No person shall be appointed or employed as a law enforcement officer or a part-time law enforcement officer unless that person has been certified as being qualified under the provisions of subsection (4) of this section.

(b) No person shall be appointed or employed as a law enforcement trainee in a full-time capacity by any law enforcement unit for a period to exceed one (1) year. No person shall be appointed or employed as a law enforcement trainee in a part-time, reserve or auxiliary capacity by any law enforcement unit for a period to exceed two (2) years. The prohibition against the appointment or employment of a law enforcement trainee in a full-time capacity for a period not to exceed one (1) year or a part-time, reserve or auxiliary capacity for a period not to exceed two (2) years may not be nullified by terminating the appointment or employment of such a person before the expiration of the time period and then rehiring the person for another period. Any person, who, due to illness or other events beyond his control, could not attend the required school or training as scheduled, may serve with full pay and benefits in such a capacity until he can attend the required school or training.

(c) No person shall serve as a law enforcement officer in any full-time, part-time, reserve or auxiliary capacity during a period when that person's certification has been suspended, cancelled or recalled pursuant to the provisions of this chapter.

(4) In addition to the requirements of subsections (3), (7) and (8) of this section, the board, by rules and regulations consistent with other provisions of law, shall fix other qualifications for the employment of law enforcement officers, including minimum age, education, physical and mental standards, citizenship, good moral character, experience and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement officers, and the board shall prescribe the means for presenting evidence of fulfillment of these requirements. Additionally, the board shall fix qualifications for the appointment or employment of part-time law enforcement officers to essentially the same standards and

requirements as law enforcement officers. The board shall develop and implement a part-time law enforcement officer training program that meets the same performance objectives and has essentially the same or similar content as the programs approved by the board for full-time law enforcement officers and the board shall provide that such training shall be available locally and held at times convenient to the persons required to receive such training.

(5) Any elected sheriff, constable, deputy or chief of police may apply for certification. Such certification shall be granted at the request of the elected official after providing evidence of satisfaction of the requirements of subsections (3) and (4) of this section. Certification granted to such elected officials shall be granted under the same standards and conditions as established by law enforcement officers and shall be subject to recall as in subsection (7) of this section.

(6) The board shall issue a certificate evidencing satisfaction of the requirements of subsections (3) and (4) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the board for approved law enforcement officer education and training programs in this state, and has satisfactorily passed any and all diagnostic testing and evaluation as required by the board to ensure competency.

(7) Professional certificates remain the property of the board, and the board reserves the right to either reprimand the holder of a certificate, suspend a certificate upon conditions imposed by the board, or cancel and recall any certificate when:

(a) The certificate was issued by administrative error;

(b) The certificate was obtained through misrepresentation or fraud;

(c) The holder has been convicted of any crime involving moral turpitude;

(d) The holder has been convicted of a felony;

(e) The holder has committed an act of malfeasance or has been dismissed from his employing law enforcement agency; or

(f) Other due cause as determined by the board.

(8) When the board believes there is a reasonable basis for either the reprimand, suspension, cancellation of, or recalling the certification of a law enforcement officer or a part-time law enforcement officer, notice and opportunity for a hearing shall be provided in accordance with law prior to such reprimand, suspension or revocation.

(9) Any full- or part-time law enforcement officer aggrieved by the findings and order of the board may file an appeal with the chancery court of the county in which such person is employed from the final order of the board. Such appeals must be filed within thirty (30) days of the final order of the board.

(10) Any full- or part-time law enforcement officer whose certification has been cancelled pursuant to this chapter may reapply for certification, but not sooner than two (2) years after the date on which the order of the board cancelling such certification becomes final.

SOURCES: Laws, 1981, ch. 474, § 6; Laws, 1990, ch. 434, § 3; Laws, 1992, ch. 415, § 1; Laws, 1993, ch. 584, § 1; Laws, 1994, ch. 516, § 2; Laws, 1998, ch. 394, § 3; Laws, 1999, ch. 506, § 1; Laws, 2009, ch. 539, § 2; Laws, 2013, ch. 425, § 1, eff from and after July 1, 2013.

Cross References — Satisfaction of certain provisions of this section as exempting constables from requirement that they attend specified training program, see § 19-19-5.

Instructors and curriculum of law enforcement officers training academy, see § 45-5-7.

Acceptance or rejection of applicants for law enforcement officers training academy, see § 45-5-13.

Revocation of certification as chief of police of municipality for failure to comply with continuing education requirement, see § 45-6-19.

State Chief Deputy Fire Marshal not required to meet requirements of this section, see § 45-11-105.

Carrying of pistols, firearms or other weapons by criminal investigators, see § 97-37-7.

JUDICIAL DECISIONS

1. In general.
2. Illness or other events.
3. Suspension or revocation of certification.
4. Full-time certification.

1. In general.

This section only permits the grandfathering of law enforcement officers in service in Mississippi on July 1, 1981, and does not allow grandfathering of law enforcement officers employed in other states on that date. Board on Law Enforcement Officer Stds. & Training v. Voyles, 732 So. 2d 216 (Miss. 1999).

Unemployment compensation claimant's failure to pass physical fitness test required to receive certification as police officer after his first year of employment was "misconduct" disqualifying him from receiving benefits; claimant's actions were clearly in wanton disregard of employer's interest, and claimant had ability to pass physical test within his personal control but evidence showed that he did not attempt to keep his physical fitness up to standards required to pass test. City of Clarksdale v. Mississippi Emp. Sec. Comm'n, 699 So. 2d 578 (Miss. 1997).

Section 45-6-11 does not create private right of action for recovery of damages, therefore any claim attempted to be directly asserted under that section, in action by arrestee against city and police chief under 42 USCS § 1983 alleging that arrestee was arrested by inadequately trained officer and detained for 8 hours without being informed about charges against him, should be dismissed. White v. Taylor, 775 F. Supp. 962 (S.D. Miss. 1990), rev'd on other grounds, 959 F.2d 539 (5th Cir. 1992).

A capital murder indictment charging the defendant with the killing of a police officer "while acting in his official capacity...with knowledge that the victim was a peace officer" was not defective, despite the defendant's argument that the victim was not authorized to exercise the powers of an officer pursuant to § 45-6-11 because he had one year from the date he became employed as a law enforcement officer to obtain his certification from the State of Mississippi Board on Law Enforcement Standards and Training and the victim did not have this certification though he had been employed by the police department for 14 months, where the victim had been a part time police officer until 3 or 4 months prior to his death when he had become full time, and therefore he had 8 or 9 months until certification was necessary since he met the definition of a law enforcement officer for only 3 or 4 months in accordance with § 45-6-3(c), which defines a law enforcement officer as "any person appointed or employed full time by the State or any political subdivision thereof. . ." (emphasis added). Green v. State, 614 So. 2d 926 (Miss. 1992).

2. Illness or other events.

The exception for a person, who, due to illness or other events beyond his control, could not attend the required school or training as scheduled, applies only to one who will later be able to attend and does not apply to a person with a degenerative medical condition that will not improve. Board on Law Enforcement Officer Stds. & Training v. Voyles, 732 So. 2d 216 (Miss. 1999).

3. Suspension or revocation of certification.

Chancery court exceeded its authority in reversing a decision of the Board on Law Enforcement Officer Standards and Training for the Mississippi Department of Public Safety recalling a police officer's law enforcement certificate under Miss. Code Ann. § 45-6-11 nine years after the officer pled guilty to a felony charge of embezzlement for pawning police department guns because the Board was within its authority to recall the certificate and substantial evidence supported its recall decision. Miss. Dep't of Pub. Safety Bd. on Law Enforcement Officer Stds. & Training v. Johnson, 66 So. 3d 703 (Miss. Ct. App. June 21, 2011).

Chancery court improperly reversed the cancellation of a police officer's certificate by the Board on Law Enforcement Officer Standards and Training under Miss. Code Ann. § 45-6-11 because the board's findings as to the officer's cocaine possession were based on substantial evidence, notwithstanding the officer's previous acquittal on criminal charges and award of unemployment compensation benefits. Miss. Bd. on Law Enforcement Officer Stds. & Training v. Clark, 964 So. 2d 570 (Miss. Ct. App. 2007).

A law enforcement officer's certificate was properly recalled where the officer pled guilty for the limited purpose of treating his offense under § 99-15-26, he successfully completed the conditions imposed by the court upon such plea, and the cause was dismissed without a formal adjudication of guilt. Board on Law Enforcement Officer Stds. & Training v. Rushing, 752 So. 2d 1085 (Miss. Ct. App. 1999).

Substantial evidence supported the decision of the Mississippi Board on Law Enforcement Officer Standards and Training to deny officers' applications to be certified as full-time law enforcement officers because the officers did not meet the minimum standards under the Board's long-standing policy for full-time certification. Miss. Dep't of Pub. Safety v. Holden, — So. 3d —, 2014 Miss. App. LEXIS 233 (Miss. Ct. App. Apr. 29, 2014).

4. Full-time certification.

Decision of the Mississippi Board on Law Enforcement Officer Standards and Training to deny officers' applications to be certified as full-time law enforcement officers was not arbitrary or capricious because Board's action was consistent with the Board's policy of how an applicant became certified full-time; the plain language of the statute authorizes, but does not require, that every applicant meeting the two requirements be certified as full-time. Miss. Dep't of Pub. Safety v. Holden, — So. 3d —, 2014 Miss. App. LEXIS 233 (Miss. Ct. App. Apr. 29, 2014).

Decision of the Mississippi Board on Law Enforcement Officer Standards and Training to deny officers' applications to be certified as full-time law enforcement officers was not arbitrary or capricious because the plain and unambiguous language of the statute, and the use of the term "may," gave the Board discretion to deny full-time certification for the officers, even if they had the requisite twenty-five years of law enforcement experience and received certification as part-time officers. Miss. Dep't of Pub. Safety v. Holden, — So. 3d —, 2014 Miss. App. LEXIS 233 (Miss. Ct. App. Apr. 29, 2014).

ATTORNEY GENERAL OPINIONS

Individual whose license has been canceled is not eligible for reinstatement as full-time law enforcement officer. Windom, Jan. 24, 1990, A.G. Op. #90-0025.

Law enforcement officer, whose certification is suspended, cannot, under Miss. Code Section 45-6-11(2), be employed on part-time reserve status. Sullivan, June 8, 1993, A.G. Op. #0355.

Any law enforcement officer who has had certificate suspended, canceled or recalled may not work, even on part-time basis, but prohibition as to part-time work does not apply to person who never had certificate or who has one that has not been suspended, canceled or recalled. Gregory, July 14, 1993, A.G. Op. #93-0418.

If a constable has been in office more than twenty-four months, as provided in Section 45-6-11, the statute would preclude a county from compensating a constable for fees generated under Section 25-7-27(1)(e), for serving warrants and other process, attending all trials in state cases in which the state fails in the prosecution, prior to satisfying the training requirement of Section 19-19-5(2). Carroll, February 16, 1995, A.G. Op. #95-0072.

The town marshal must be certified by the Board of Law Enforcement Officers Standards and Training if he is a “full time law enforcement officer” under 45-6-3 or he may be grandfathered under Section 45-6-11(1). Smith, August 23, 1995, A.G. Op. #95-0564.

A full-time law enforcement officer who was appointed or hired prior to July 1, 1998, but has not received training or been certified as a law enforcement officer, may continue to serve in his capacity as a full-time officer with full authority as a peace officer without being under the direct control and supervision of a certified law enforcement officer for up to one year after being appointed or hired before he is required to obtain the proper training and become certified. Lawrence, August 10, 1998, A.G. Op. #98-0472.

If a law enforcement officer has been grandfathered with respect to certification and has continued to work as a law enforcement officer without a break in service, he may continue to serve in a law enforcement capacity without certification. Lewers, Aug. 31, 2001, A.G. Op. 01-0522.

A law enforcement trainee has two years to become certified with such two year period being cumulative and not starting over upon termination and rehire. Brinkley, Nov. 2, 2001, A.G. Op. 01-0675.

Unless a law enforcement officer has been grandfathered with respect to certification and has continued to work as a law enforcement officer without a break in service he may not serve as chief of police. Miller, Feb. 4, 2005, A.G. Op. 04-0649.

Authority to hire, fire, set compensation, and define duties of municipal employees rests solely with the board of aldermen, subject to mayoral veto power. Whether a part-time police chief is sufficient to satisfy the municipality’s statutory duty to provide police protection is a factual determination to be made by the governing authority. If a municipality does not have a police chief, the board of aldermen must appoint one. An untrained part-time police officer is a law enforcement trainee who must be supervised by a certified officer and has two years from hiring to become certified. McLain, March 2, 2007, A.G. Op. #07-00069, 2007 Miss. AG LEXIS 82.

If a law enforcement officer who was certified prior to March 11, 2004 and who participated in a pretrial diversion program prior to that date is later laterally transferred from one law enforcement agency to another, the officer may not be denied transfer of certification to the new agency because of a March 11, 2004 change in the Professional Certification Policy of the Mississippi Board of Law Enforcement Officer Standards and Training. Davis, March 30, 2007, A.G. Op. #07-00148, 2007 Miss. AG LEXIS 66.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables § 7-9.

§ 45-6-13. Reimbursement for attending training program; professional library.

(1) The board shall establish, provide or maintain law enforcement training programs through such agencies and institutions as the board may deem appropriate.

(2) The board shall authorize, but only from such funds authorized and appropriated by the Legislature, the reimbursement to each political subdivision and to state agencies of at least fifty percent (50%) of the allowable salary and allowable tuition, living and travel expense incurred by law enforcement officers in attendance at approved training programs, provided said political subdivisions and state agencies do in fact adhere to the selection and training standards established by the board. The board shall authorize, but only from such funds authorized and appropriated by the Legislature, the direct funding of a part-time law enforcement officer training program. The board shall require the payment of a reasonable tuition fee to aid in funding the costs of administering the part-time law enforcement officer training program.

(3) The board is authorized to expend funds for the purpose of providing a professional library and training aids that will be available to state agencies and political subdivisions.

(4) If any full- or part-time law enforcement officer in this state who is employed by a municipality, county or other governmental entity shall, within three (3) years after the date of his employment, resign from, or be terminated from, employment by such entity and immediately become employed by another governmental entity in a law enforcement capacity, then the governmental entity by which the resigned or terminated officer is employed shall reimburse the governmental entity from which the officer resigned or was terminated a proportionate share of the officer's law enforcement training expenses which were incurred by such entity, if any.

(5) The Mississippi Board on Law Enforcement Officer Standards and Training shall reimburse each county for the expenses incurred by sheriffs and deputy sheriffs for attendance at approved training programs as provided in Section 25-3-25.

SOURCES: Laws, 1981, ch. 474, § 7; Laws, 1993, ch. 458, § 1; Laws, 1998, ch. 394, § 4; Laws, 2014, ch. 323, § 3, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (5).

ATTORNEY GENERAL OPINIONS

Deputy sheriff is not law enforcement officer as defined in Section 45-6-3(c) at time of appointment, but is considered law enforcement officer at time he or she begins to perform law enforcement duties. Whitmore, March 3, 1994, A.G. Op. #93-0932.

Under Section 45-6-13(4), a law enforcement agency that terminates an officer within three years of the date of his employment is entitled to reimbursement of training expenses from another agency if that officer is hired by the other agency within thirty days from the termination. Best, August 31, 1995, A.G. Op. #95-0602.

Under Section 45-6-13(4), only the actual expenses incurred by the police agency for the training of the officer should be reimbursed. These include the same expenses reimbursable under Section 46-6-13(2). Russell, August 31, 1995, A.G. Op. #95-0576.

Pursuant to Section 45-6-13(4), "law enforcement training expenses" which must be reimbursed are those listed in subsection (2), namely, "the salary and allowable tuition, living and travel expense incurred by the officers in attendance at approved training programs ..." Proportionate share would be determined on a total 3 year basis pro rated over 36 months, for example: if the officer worked 24 months for the first entity, the second entity would have to reimburse the first for 12/36ths of the total expenses. See paragraph 20.3.1, Policy and Procedures of the Board of Law Enforcement Officers Standards and Training. McWilliams, December 20, 1996, A.G. Op. #96-0801.

Any money received from a federal grant that is used to pay for training expenses of a law enforcement officer will be included in the actual expense incurred by an entity when calculating the transfer reimbursement amount that a hiring entity is obligated to pay to the entity from which the officer is leaving; in other words, a federal grant does not change the amount of transfer reimbursement that is owed by a hiring entity to the entity from which the law enforcement officer is leaving. Thach, January 22, 1999, A.G. Op. #99-0013.

A governmental entity may recover a proportionate share of the law enforcement training expenses incurred by it for any officer that leaves employment within three years after the date of his employment with that entity and immediately becomes employed by another governmental entity in a law enforcement capacity; this would include any training expenses incurred by an entity that were paid to another entity as reimbursement of the officer's original training expenses. White, June 25, 1999, A.G. Op. #99-0298.

Subsection (4) of this section is the only way a municipality can get reimbursed when a law enforcement officer is re-employed by another municipality. Lawrence, August 13, 1999, A.G. Op. #99-0382.

Subsection (4) of this section is the only way a municipality can get reimbursed when a law enforcement officer is re-employed by another municipality. Lawrence, August 13, 1999, A.G. Op. #99-0382.

Clothing expenses incurred on behalf of an officer sent to a police academy are not part of the training expenses that constitute the transfer reimbursement as specified in Section 45-6-13(4). Lawrnce, Apr. 11, 2003, A.G. Op. 03-0156.

The phrase "within three (3) years after the date of employment" in subsection (4) of this section refers to the date of hire. Richardson, Feb. 14, 2005, A.G. Op. 05-0025.

§ 45-6-15. Law Enforcement Officers Training Fund.

(1)(a) Such assessments as are collected under Section 99-19-73, Mississippi Code of 1972, and contributions, grants and other monies received by the board under the provisions of this chapter shall be deposited in a special fund hereby created in the State Treasury and designated the "Law Enforcement Officers Training Fund," which shall be expended by the board to defray the expenses of the program as authorized and appropriated by the Legislature.

(b) Twenty-five percent (25%) of the assessments collected under Section 99-19-73, Mississippi Code of 1972, shall be deposited into the "Jail Officer Training Account" which is hereby created in the "Law Enforcement Officers Training Fund." The funds in such account shall be expended by the Board on Jail Officer Standards and Training to defray the expenses of the jail officers training program as authorized and appropriated by the Legislature.

(c) Unexpended amounts remaining in the fund and account at the end of the fiscal year shall not lapse into the State General Fund and any interest earned on the fund shall be deposited to the credit of the fund.

(2) The board may accept for any of its purposes and functions under this chapter any and all donations, both real and personal property, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation.

(3) Money authorized and appropriated by the Legislature shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, which shall issue its warrants upon requisitions signed by the proper person, officer or officers of the commission, in the manner provided by law.

SOURCES: Laws, 1981, ch. 474, § 8; Laws, 1990, ch. 329, § 8; Laws, 1999, ch. 482, § 8; Laws, 2000, ch. 515, § 11, eff from and after July 1, 2000.

Cross References — Collection of fines and penalties by clerk of circuit court, see § 99-19-65.

Deposit of portion of standard state assessment into the Law Enforcement Officers Training Fund, see § 99-19-73.

§ 45-6-17. Noncomplying officers and officers with certificates revoked or suspended not to exercise powers; salary not to be paid.

(1) Any full- or part-time law enforcement officer who does not comply with the provisions of this chapter, or whose certificate has been suspended or revoked under provisions of this chapter, shall not be authorized to exercise the powers of law enforcement officers generally, and particularly shall not be authorized to exercise the power of arrest.

(2) Any state agency or political subdivision that employs a person as a full- or part-time law enforcement officer who does not meet the requirements of this chapter, or who employs a person whose certificate has been suspended or revoked under provisions of this chapter, is prohibited from paying the salary of such person, or providing any public monies for the equipment or support of the law enforcement activities of such person and any person violating this subsection shall be personally liable for making such payment.

SOURCES: Laws, 1981, ch. 474, § 9; Laws, 1992, ch. 415, § 2; Laws, 1998, ch. 394, § 5, eff from and after July 1, 1998.

ATTORNEY GENERAL OPINIONS

Any individual who is not certified, meeting the standards as set by the Board on Law Enforcement Officer Standards and Training, may not serve as a law enforcement officer or part-time law enforcement officer. Byrd, Dec. 17, 1999, A.G. Op. #99-0665.

A political subdivision may not pay the salary of an individual employed as a part-time law enforcement officer who does not meet the requirements of Title 45, Chapter 6 of the Mississippi Code Annotated; further, any individual who does not meet the requirements of Title 45, Chapter 6 of the Mississippi Code Annotated may not exercise the powers of a law enforcement officer, particularly the power of arrest. Hatcher, Mar. 29, 2002, A.G. Op. #02-0127.

§ 45-6-19. Continuing education requirement for municipal police chiefs and officers.

(1) The chief of police of any municipality in the State of Mississippi is required to annually complete twenty (20) hours of executive level continuing education courses which are approved by the Mississippi Board on Law Enforcement Officers Standards and Training. Any new chief of police having never previously served in that capacity, is required to complete forty (40) hours of executive level continuing education courses for his first year of service. Such education courses may be provided by an accredited law enforcement academy or by the Mississippi Association of Chiefs of Police.

(2) Any police officer of any municipality in the State of Mississippi is required to annually complete a specified number of hours, as stated in this subsection, of continuing education courses which are approved by the Mississippi Board on Law Enforcement Officers Standards and Training. The following number of hours of continuing education courses is required for municipal police officers based upon the number of years following July 1, 2004:

0-2 years after July 1, 2004 ....8 hours of annual training
3-4 years after July 1, 2004 ....16 hours of annual training
5 or more years after July 1, 2004 ....24 hours of annual training

Such education courses may be provided by an accredited law enforcement academy or by the Mississippi Association of Chiefs of Police.

(3) The Mississippi Board on Law Enforcement Officers Standards and Training shall reimburse each municipality for the expense incurred for chiefs of police and municipal police officers in attendance at approved training programs as required by this section.

(4) Any chief of police or municipal police officer who fails to comply with the provisions of this section shall be subject to having his certification as a chief of police or municipal police officer revoked by the Mississippi Board on Law Enforcement Officers Standards and Training, in accordance with Section 45-6-11.

(5) The Mississippi Board on Law Enforcement Officers Standards and Training is authorized to institute and promulgate all rules necessary for considering the revocation of any municipal chief of police or municipal police

officer who does not comply with the provisions of this section, and may grant, for sufficient cause shown, an extension of time in which compliance with the provisions of this section may be made.

(6) Any chief of police or municipal police officer who is aggrieved by any order or ruling made under the provisions of this section has the same rights and procedure of appeal as from any other order or ruling of the Mississippi Board on Law Enforcement Officers Standards and Training.

SOURCES: Laws, 1993, ch. 413, § 1; Laws, 2004, ch. 418, § 1, eff from and after July 1, 2004.

ATTORNEY GENERAL OPINIONS

Continuing education courses may be provided by the academy or chief's association, but the Board on Law Enforcement Officers Standards and Training may also approve other entities, in its discretion, to provide the courses. Davis, Nov. 8, 2004, A.G. Op. 04-0518.

Reimbursement of expenses under this section include any out of pocket costs incurred for attendance. This includes travel, lodging, meals, and any other costs connected with the attendance. It specifically does not include salaries as does § 45-6-13. Davis, Nov. 8, 2004, A.G. Op. 04-0518.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 7-9.

§ 45-6-21. Motorcycle Officers Training Program Fund created.

There is created in the State Treasury a special fund to be known as the Motorcycle Officers Training Program Fund, which shall be administered by the Office of the Attorney General. The purpose of the fund shall be to provide funding for the training of state and local law enforcement officers, including, but not limited to, motorcycle officers training. All courses provided under the Motorcycle Officers Training Program shall be administered and approved by the Mississippi Law Enforcement Officers Association. Monies in the fund shall be expended by the Attorney General, upon appropriation by the Legislature. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Motorcycle Officers Training Program;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

SOURCES: Laws, 2012, ch. 554, § 2, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 554, § 6 provides:

"SECTION 6. During fiscal year 2013, the following agencies shall have the authority to receive, budget and expend the following amounts generated from the assessments enacted in House Bill No. 878, 2012 Regular Session [Chapter 554, Laws of 2012]:

"University of Mississippi Medical Center for the Children's Justice Center	$750,000.00
"Board of Trustees of State Institutions of Higher Learning for the DuBard School for Language Disorders	$300,000.00
"Attorney General's office for the Children's Advocacy Centers of Mississippi	$650,000.00
"Attorney General's office for the Motorcycle Officers Training Program	$50,000.00

"The above listed escalations shall be done in accordance with the rules and regulations of the Department of Finance and Adminstration in a manner consistent with the escalation of federal funds."

This note was set out to correct an error in the 2012 Cumulative Supplement.

CHAPTER 7

County Patrol Officers

Employment, Duties, Uniforms Compensation and Transportation of Patrol Officers 45-7-1
Patrol Officers in Certain Counties Having Two Judicial Districts, Wherein Certain Highways Intersect, or Bordering on Pearl River 45-7-21
Patrol Officers in Certain Counties, Bordering on Gulf of Mexico, Bordering on State of Alabama, or Bordering on Mississippi River 45-7-41

EMPLOYMENT, DUTIES, UNIFORMS COMPENSATION AND TRANSPORTATION OF PATROL OFFICERS

Sec.
45-7-1. Counties may employ men to enforce road laws.
45-7-3. Duties of patrol officers; uniforms.
45-7-5. Compensation; transportation.

§ 45-7-1. Counties may employ men to enforce road laws.

The board of supervisors of any county is hereby authorized to employ, in its discretion, not exceeding three (3) men in counties of Classes 1 and 2, and not exceeding two (2) men to be regularly employed at any time in counties of other classes, whose duty it shall be to patrol the roads of the county and to enforce the road and motor vehicle laws.

It is hereby expressly provided that such patrol officers shall not have the power and authority, nor shall they be authorized by the motor vehicle comptroller or the tax collector of any county, to enforce any of the provisions of law relating to the taxation of motor vehicles using the highways of this state; nor shall they receive or collect any taxes due or alleged to be due under any of such laws. This shall not apply to a county where the federal government owns thirty-five percent (35%) or more of the total acreage of the county.

SOURCES: Codes, 1930, § 5583; 1942, § 8061; Laws, 1926, ch. 202; Laws, 1946, ch. 277, § 1.

Cross References — Salaries and qualifications of highway patrolmen, see §§ 45-3-7, 45-3-9.

Additional, supplemental powers and authority, see §§ 45-7-41 through 45-7-45.

JUDICIAL DECISIONS

1. In general.

The provision of the statute which authorizes patrol officers to do and perform all acts authorized to be done by the sheriff, constables or any peace officer was intended to vest in patrol officers only such police powers as may be necessary to enable them to perform properly the duties imposed upon them by the statute as county road patrolmen. State v. Necaise, 228 Miss. 542, 87 So. 2d 922 (1956).

It was not the intention of the legislature to authorize patrol officers who were employed "to patrol roads of the county and to enforce the road and motor vehicle laws", to take over the duties or exercise the powers of the sheriff, or constable or other peace officer, in the enforcement of the general criminal laws of the state, or in the service of criminal or civil process in cases which do not arise out of and have no relation to the performance of their duties as county road patrolmen. State v. Necaise, 228 Miss. 542, 87 So. 2d 922 (1956).

§ 45-7-3. Duties of patrol officers; uniforms.

Said patrol officers are hereby authorized to do and perform all acts authorized to be done by the sheriff, constable, or any peace officer. Said patrol officers in addition to their duties as peace officers, shall note the condition of the roads and bridges of the county and make report thereof to the board of supervisors as may be required by said board.

Such patrol officer shall not have the power and authority to enforce the traffic laws, rules and regulations of this state, or any related laws upon any highway of the state highway system, unless and until they have been authorized and empowered to enforce such laws and to aid and assist in the enforcement thereof by the commissioner of public safety. The commissioner of public safety may grant or withhold such authority to the patrolmen of each individual county in his discretion, and may provide and promulgate reasonable rules and regulations under which the patrol officers to whom such authority has been granted shall act in enforcing such laws.

In the performance of their official duties such patrol officers shall have the power and authority to wear uniforms, but they shall not wear the same uniforms as are worn by members of the highway safety patrol of Mississippi, nor shall they wear uniforms substantially identical thereto.

SOURCES: Codes, 1930, § 5584; 1942, § 8062; Laws, 1926, ch. 202; Laws, 1946, ch. 277, § 2.

Cross References — Provision under which county highway patrolmen may be authorized to wear the uniform and insignia of state highway safety patrolmen and to discharge the duties thereof, see § 45-3-29.

JUDICIAL DECISIONS

1. In general.

It was not the intention of the legislature to authorize patrol officers who were employed "to patrol roads of the county and to enforce the road and motor vehicle laws", to take over the duties or exercise the powers of the sheriff, or constable or other peace officer, in the enforcement of the general criminal laws of the state, or in the service of criminal or civil process in cases which do not arise out of and have no relation to the performance of their duties as county road patrolmen. State v. Necaise, 228 Miss. 542, 87 So. 2d 922 (1956).

ATTORNEY GENERAL OPINIONS

Pursuant to Section 45-7-3, county patrol officers do not have the authority to exercise the powers of the sheriff or constable to enforce criminal laws except to the extent that such laws relate to the patrolling of county roads and the enforcement of the road and motor vehicle laws. Sollie, August 23, 1996, A.G. Op. #96-0568.

A county patrolman has law enforcement jurisdiction and falls under the authority of the Board on Law Enforcement Officer Standards and Training with respect to certification. Houston, Sr., Feb. 2, 2001, A.G. Op. #2001-0045.

A county board of supervisors may not remove the county patrolmen from the authority of the Board on Law Enforcement Officer Standards and Training. Houston, Sr., Feb. 2, 2001, A.G. Op. #2001-0045.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police and Constables §§ 30, 31, 39.

CJS. 80 C.J.S., Sheriffs and Constables §§ 51 et seq.

§ 45-7-5. Compensation; transportation.

(1) Subject to the provisions of subsection (2) of this section, the board of supervisors may compensate the county patrol officers in an amount not to exceed Five Hundred Dollars ($500.00) per month for any one (1) county; in no case shall any one (1) patrol officer receive compensation in excess of Two Hundred Dollars ($200.00) per month. In addition to such compensation, the board of supervisors may furnish the patrol officers means of transportation.

(2)(a) The board of supervisors of any county having a population of thirty-one thousand six hundred fifty-three (31,653) according to the 1960 federal decennial census, having a land area of nine hundred thirty-eight (938) square miles, and wherein U.S. Highway 49 and Mississippi Highway 16 intersect, may compensate the county patrol officers in an amount not to exceed One Thousand Dollars ($1,000.00) per month for any such county; in no case shall any one (1) patrol officer receive compensation in excess of Five Hundred Dollars ($500.00) per month.

(b) The board of supervisors of any county bordering on the Louisiana line and Mississippi River may fix the compensation of the county patrol officers at an amount not to exceed Four Hundred Dollars ($400.00) per month per patrol officer.

(c) The board of supervisors of any county bordering on the Mississippi River wherein is located a national park and cemetery, wherein U.S. Highways 80 and 61 intersect, and having a population in excess of forty-two thousand (42,000) according to the 1960 federal decennial census, may compensate the county patrol officers in an amount not to exceed One Thousand Five Hundred Dollars ($1,500.00) per month for any such county but in no case in excess of Five Hundred Dollars ($500.00) per month per officer.

(d) The board of supervisors of any Class 4 county bordering on the state of Alabama wherein U.S. Highway 98 and Mississippi Highway 63 intersect, having a land area of four hundred eighty-one (481) square miles, may, in its discretion, compensate each of its county patrol officers in an amount not in excess of Six Hundred Fifty Dollars ($650.00) per month.

(e) The board of supervisors of any county in which U.S. Highway 45 and Mississippi Highway 16 intersect may, in its discretion, compensate its county patrol officers in an amount not to exceed Six Hundred Dollars ($600.00) per month per patrol officer.

(f) The board of supervisors of any county in which the Natchez Trace Parkway and Mississippi Highway 35 intersect and which has a population according to the 1990 federal decennial census in excess of eighteen thousand four hundred (18,400), in its discretion, may compensate its county patrol officers in an amount not to exceed Two Thousand Dollars ($2,000.00) per month per patrol officer.

SOURCES: Codes, 1930, § 5585; 1942, § 8063; Laws, 1926, ch. 202; Laws, 1968, ch. 291, § 1; Laws, 1971, ch. 366, § 1; Laws, 1974, ch. 538, § 1; Laws, 1976, ch. 325; Laws, 2001, ch. 441, § 1, eff from and after July 1, 2001.

Cross References — Additional, supplemental powers and authority, see §§ 45-7-41 through 45-7-45.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police and Constables §§ 40, 41 et seq.

CJS. 80 C.J.S., Sheriffs and Constables §§ 502 et seq.

PATROL OFFICERS IN CERTAIN COUNTIES HAVING TWO JUDICIAL DISTRICTS, WHEREIN CERTAIN HIGHWAYS INTERSECT, OR BORDERING ON PEARL RIVER

SEC.
45-7-21. Employment of patrol officers.
45-7-23. Duties of patrol officers; uniforms.
45-7-25. Radio equipment.
45-7-27. Compensation of patrol officers; transportation; bond.
45-7-29. Powers to be additional and supplemental.

§ 45-7-21. Employment of patrol officers.

(1) The board of supervisors of any county in the State of Mississippi having two (2) judicial districts and an assessed valuation of property for ad valorem taxation in excess of Five Hundred Million Dollars ($500,000,000.00), according to the last completed assessment for taxation is authorized to employ, in its discretion, not exceeding nine (9) persons whose duty it shall be to patrol the roads of the county and to enforce the road and motor vehicle laws.

(2) The board of supervisors of any county in the State of Mississippi wherein Interstate Highway 55 and State Highway 22 intersect and which is also traversed in whole or part by U. S. Highways 49 and 51, and State Highways 16, 17, 43 and the Natchez Trace, and also containing a part of a public lake or reservoir in excess of thirty thousand (30,000) acres, is authorized to employ, in its discretion, not exceeding seven (7) persons whose

duty it shall be to patrol the roads of the county and to enforce the road and motor vehicle laws.

(3) The board of supervisors of any Class 1 county bordering on the east side of Pearl River, and wherein are located five (5) incorporated municipalities, may employ one (1) patrol officer for the supervisors district wherein are located the two (2) incorporated municipalities.

SOURCES: Codes, 1942, §§ 8063-01, 8063-04; Laws, 1956, ch. 196, §§ 1, 4; Laws, 1960, ch. 207; Laws, 1964, ch. 285, §§ 1, 2; Laws, 1966, ch. 302, § 1; Laws, 1968, ch. 291, § 2; Laws, 1971, ch. 434, § 1; Laws, 1973, ch. 492, §§ 1, 2; Laws, 1980, ch. 395, eff from and after Oct 1, 1980.

§ 45-7-23. Duties of patrol officers; uniforms.

Patrol officers employed pursuant to Section 45-7-21 are authorized to do, in the performance of their duties, all acts authorized to be done by the sheriff, constable, or any peace officer. Said patrol officers, in addition to their duties as peace officers, shall note the condition of the roads and bridges of the county and make report thereof to the board of supervisors as may be required by said board.

Said patrol officers shall not have the power and authority to enforce the traffic laws, rules and regulations of this state, or any related laws upon any highway of the state highway system, unless and until they have been authorized and empowered to enforce such laws and to aid and assist in the enforcement thereof by the commissioner of public safety. The commissioner of public safety may grant or withhold such authority to the patrolmen of each individual county in his discretion, and may provide and promulgate reasonable rules and regulations under which the patrol officers to whom such authority has been granted shall act in enforcing such laws.

In the performance of their official duties, such patrol officers shall have the power and authority to wear uniforms, but they shall not wear the same uniforms as are worn by members of the highway safety patrol of Mississippi, nor shall they wear uniforms substantially identical thereto.

SOURCES: Codes, 1942, § 8063-02; Laws, 1956, ch. 196, § 2.

Cross References — Provision under which county highway patrolmen may be authorized to wear the uniform and insignia of state highway safety patrolmen and to discharge the duties thereof, see § 45-3-29.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 30, 31, 39.

CJS. 80 C.J.S., Sheriffs and Constables §§ 217 et seq.

§ 45-7-25. Radio equipment.

The board of supervisors is authorized and empowered, in its discretion, to acquire radio transmitting and receiving equipment for use by said patrol officers in the performance of their duties.

SOURCES: Codes, 1942, § 8063-03; Laws, 1956, ch. 196, § 3.

§ 45-7-27. Compensation of patrol officers; transportation; bond.

(1) Subject to the provisions of subsection (2), the board of supervisors of any such county may compensate the county patrol officers in an amount not to exceed Two Thousand Dollars ($2,000.00) per month for any one (1) county; in no case shall any one (1) patrol officer receive compensation in excess of Four Hundred Dollars ($400.00) per month. In addition to such compensation, the board of supervisors may furnish said patrol officers with means of transportation or reimburse them for their actual and proven transportation expenses. Such compensation and transportation expenses shall be paid from the general fund of the county.

(2)(a) The board of supervisors of any county bordering on the Mississippi Sound, and having two (2) judicial districts and an assessed valuation of property for ad valorem taxation in excess of Two Hundred Million Dollars ($200,000,000.00) according to the last completed assessment for taxation, may, in its discretion, compensate each such officer in an amount not to exceed One Thousand Five Hundred Dollars ($1,500.00) per month.

(b) The board of supervisors of any county bordering on the west side of the Pearl River, and having two (2) judicial districts and an assessed valuation of property for ad valorem taxation in excess of Two Hundred Million Dollars ($200,000,000.00), according to the last completed assessment for taxation, may, in its discretion, compensate each such officer in an amount not to exceed One Thousand Five Hundred Dollars ($1,500.00) per month.

(c) The board of supervisors of any Class 1 county bordering on the east side of Pearl River, and wherein are located five (5) incorporated municipalities, may compensate the patrol officer employed for the supervisors district wherein are located two (2) incorporated municipalities in an amount not in excess of Four Hundred Fifty Dollars ($450.00) per month.

(d) The board of supervisors of any county bordering on the State of Alabama and the Mississippi Sound and having an assessed valuation of property for ad valorem taxation in excess of Five Hundred Million Dollars ($500,000,000.00) according to the last completed assessment for taxation may, in its discretion, compensate each such officer in an amount not to exceed One Thousand Five Hundred Dollars ($1,500.00) per month.

(e) The board of supervisors of any county bordering on the west side of the Pearl River, and wherein are located four (4) incorporated municipalities, may, in its discretion, compensate each such officer in an amount not to exceed One Thousand Five Hundred Dollars ($1,500.00) per month.

(3) Each county patrol officer shall, prior to entering upon the duties of his office, give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty not less than Fifty Thousand Dollars ($50,000.00). The premium for such bond shall be paid from the general fund of such county.

SOURCES: Codes, 1942, § 8063-04; Laws, 1956, ch. 196, § 4; Laws, 1960, ch. 207; Laws, 1964, ch. 285, § 2; Laws, 1966, ch. 302, § 1; Laws, 1968, ch. 291, § 2; Laws, 1971, ch. 434, § 1; Laws, 1973, ch. 492, § 2; Laws, 1975, ch. 505; Laws, 1976, ch. 326; Laws, 1978, ch. 328, § 1; Laws, 1979, ch. 503; Laws, 1980, ch. 557, § 1; Laws, 1985, ch. 415; Laws, 1986, ch. 400, § 31; Laws, 1986, ch. 458, § 39; Laws, 1988, ch. 500; Laws, 2009, ch. 467, § 17, eff from and after July 1, 2009.

Editor's Note — Laws of 1986, ch. 458, § 48, provided that § 45-7-27 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Laws of 1986, ch. 458, § 48, by deleting the date for repeal.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 40, 41 et seq.

CJS. 80 C.J.S., Sheriffs and Constables §§ 502 et seq.

§ 45-7-29. Powers to be additional and supplemental.

The power and authority granted in Sections 45-7-21 through 45-7-27 shall be additional and supplemental to the power and authority of Sections 45-7-1 through 45-7-5.

SOURCES: Codes, 1942, § 8063-05; Laws, 1956, ch. 196, § 5.

PATROL OFFICERS IN CERTAIN COUNTIES, BORDERING ON GULF OF MEXICO, BORDERING ON STATE OF ALABAMA, OR BORDERING ON MISSISSIPPI RIVER

Sec.
45-7-41. Employment of patrol officers.
45-7-43. Duties of patrol officers.
45-7-45. Compensation; transportation; uniforms; equipment.
45-7-47. Powers to be additional and supplemental.

§ 45-7-41. Employment of patrol officers.

(1) The board of supervisors of any county:

(a) Bordering on the Gulf of Mexico, having created a county port authority under the provisions of Sections 59-9-1 through 59-9-85, Mississippi Code of 1972; or

(b) Bordering on the State of Alabama, having a land area of seven hundred twenty-one (721) square miles, having a population in excess of sixty-seven thousand (67,000) in the 1960 federal decennial census, wherein there is located a state-supported mental institution, and wherein U. S.

Highways 80 and 45 intersect; may employ not more than five (5) county patrol officers.

(2) The board of supervisors of any county bordering on the Mississippi River and having an area of four hundred forty-eight (448) square miles with a population not in excess of thirty-two thousand five hundred (32,500), and a municipality therein with a population in excess of twenty-two thousand (22,000) and of not more than twenty-three thousand (23,000), all in accordance with the federal census of 1950, may employ not more than two (2) county patrol officers.

SOURCES: Codes, 1942, § 8063.5; Laws, 1958, ch. 216, §§ 1-5; Laws, 1960, ch. 206; Laws, 1966, ch. 567, § 1; Laws, 1968, ch. 292; Laws, 1976, ch. 338, § 1, eff from and after passage (approved April 13, 1976).

§ 45-7-43. Duties of patrol officers.

Those county patrol officers who are employed pursuant to the authority granted in Section 45-7-41 shall exercise the same duties and have the same power and authority as provided for under Section 45-7-3.

The duties of such county patrol officers shall be performed only in the county in which employed. Such county patrol officers shall not be authorized to operate county patrol vehicles outside of the limits of such county, except in case of emergency when the public safety and welfare shall require the same.

SOURCES: Codes, 1942, § 8063.5; Laws, 1958, ch. 216, §§ 1-5; Laws, 1960, ch. 206; Laws, 1966, ch. 567, § 1; Laws, 1968, ch. 292, eff from and after passage (approved June 21, 1968).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 30, 31, 39.

CJS. 80 C.J.S., Sheriffs and Constables §§ 51 et seq.

§ 45-7-45. Compensation; transportation; uniforms; equipment.

(1) The board of supervisors of any county specified in subsection (1) of Section 45-7-41 may pay the county patrol officers in an amount not to exceed Five Thousand Dollars ($5,000.00) per month for any one (1) county; in no case shall any one (1) patrol officer receive in excess of Nine Hundred Fifty Dollars ($950.00) per month. Said board may also pay a reimbursement for expenses in an amount not to exceed Five Hundred Dollars ($500.00) per month for any one (1) county; in no case shall any one (1) patrol officer receive in excess of One Hundred Dollars ($100.00) per month.

(2) The board of supervisors of any county specified in subsection (2) of Section 45-7-41 may pay the county patrol officers in an amount not to exceed One Thousand Dollars ($1,000.00) per month for any one (1) county; in no case shall any one (1) patrol officer receive in excess of Five Hundred Dollars ($500.00) per month.

(3) The board of supervisors of any county specified in Section 45-7-41 may furnish said patrol officers means of transportation or reimburse them for their actual and proven transportation expenses, may furnish suitable uniforms, and may acquire radio transmitting and receiving equipment, and such other equipment as may be required for use by said patrol officers in the proper performance of their duties. All salaries and expenses provided for herein shall be paid from the general fund of said county.

SOURCES: Codes, 1942, § 8063.5; Laws, 1958, ch. 216, §§ 1-5; Laws, 1960, ch. 206; Laws, 1966, ch. 567, § 1; Laws, 1968, ch. 292; Laws, 1972, ch. 373, § 1; Laws, 1976, ch. 338, § 2; Laws, 1978, ch. 430, § 1; Laws, 1980, ch. 557, § 2, eff from and after passage (approved May 26, 1980).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 40, 41 et seq.

CJS. 80 C.J.S., Sheriffs and Constables §§ 502 et seq.

§ 45-7-47. Powers to be additional and supplemental.

The power and authority granted in Sections 45-7-41 through 45-7-45 shall be additional and supplemental to Sections 45-7-1 and 45-7-5.

SOURCES: Codes, 1942, § 8063.5; Laws, 1958, ch. 216, §§ 1-5; Laws, 1960, ch. 206; Laws, 1966, ch. 567, § 1; Laws, 1968, ch. 292, eff from and after passage (approved June 21, 1968).

CHAPTER 9

Weapons

Registration of Firearms. [Repealed]

Reports of Gunshots and Knifings 45-9-31
Restrictions Upon Local Regulation of Firearms or Ammunition 45-9-51
License to Carry Concealed Pistol or Revolver 45-9-101
Purchase of Sidearms by Retiring Law Enforcement Personnel 45-9-131
Docket of Deadly Weapons Seized 45-9-151

REGISTRATION OF FIREARMS
[REPEALED]

Sec.
45-9-1 through 45-9-17. Repealed.
45-9-19. Repealed.

§§ 45-9-1 through 45-9-17. Repealed.

Repealed by Laws, 1986, ch. 341, § 1, eff from and after July 1, 1986.

§ 45-9-1. [Codes, 1942, § 8621; Laws, 1942, ch. 177; Laws, 1946, ch. 272, §§ 1, 2; Laws, 1950, ch. 444, § 46]

§§ 45-9-3 through 45-9-17. [Codes, 1942, §§ 8622-8625, 8627-8630; Laws, 1942, ch. 177; Laws, 1946, ch. 272, §§ 3-6, 8-11]

Editor's Note — Former §§ 45-9-1 through 45-9-17 pertained to registration of firearms.

§ 45-9-19. Repealed.

Repealed by Laws, 1988, ch. 407, eff from and after passage (approved April 23, 1988).

[Codes, 1942, § 8631.5; Laws, 1969, Ex Sess, ch. 23, § 1]

REPORTS OF GUNSHOTS AND KNIFINGS

Sec.
45-9-31. Medical personnel required to report injuries from gunshots, knifings, and hunting or boating accidents.

§ 45-9-31. Medical personnel required to report injuries from gunshots, knifings, and hunting or boating accidents.

Any physician, surgeon, dentist, veterinarian, paramedical employee, or nurse, or any employee of a hospital, clinic, or any other medical institution or office where patients regularly receive care, who treats, at any location, any human being suffering from a wound or injury and who has reason to believe or ought to know that the wound or injury was caused by gunshot or knifing, or receiving a request for such treatment, shall report the same immediately to the municipal police department or sheriff's office of the municipality or county in which such treatment is administered or request for such treatment is received. If the wound or injury is the result of a hunting or boating accident, the injury shall be reported immediately to the Mississippi Department of Wildlife, Fisheries and Parks.

Any person making a report or the reports required by this section shall be immune from civil liability for the making of the said reports.

SOURCES: Codes, 1942, § 7015-41; Laws, 1972, ch. 530, § 1; Laws, 2002, ch. 365, § 1, eff from and after July 1, 2002.

RESTRICTIONS UPON LOCAL REGULATION OF FIREARMS OR AMMUNITION

SEC.	
45-9-51.	Prohibition against adoption of certain ordinances.
45-9-53.	Exceptions; procedure for challenging ordinances; county or municipal programs to purchase weapons from citizens.
45-9-55.	Employer not permitted to prohibit transportation or storage of firearms on employer property; exceptions; certain immunity for employer.
45-9-57.	Regulation by county of discharge of any firearm within platted subdivision.

§ 45-9-51. Prohibition against adoption of certain ordinances.

(1) Subject to the provisions of Section 45-9-53, no county or municipality may adopt any ordinance that restricts the possession, carrying, transportation, sale, transfer or ownership of firearms or ammunition or their components.

(2) No public housing authority operating in this state may adopt any rule or regulation restricting a lessee or tenant of a dwelling owned and operated by such public housing authority from lawfully possessing firearms or ammunition or their components within individual dwelling units or the transportation of such firearms or ammunition or their components to and from such dwelling.

SOURCES: Laws, 1986, ch. 471, § 1; Laws, 2014, ch. 443, § 3, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (2); in present (1), deleted "or requires" following "any ordinance that restricts" and inserted "carrying" following "the possession."

Cross References — Constitutional right to keep and bear arms, see Miss. Const. Art. 3, § 12.

ATTORNEY GENERAL OPINIONS

A city council has no authority to ban gun shows on the Mississippi State Fairgrounds. White, June 2, 2006, A.G. Op. 06-0220.

Nothing in the Section 21-8-17 or any other legal authority can be interpreted to grant the mayor of a mayor-council municipality the authority to ban gun shows by the issuance of an executive order or otherwise. White, June 2, 2006, A.G. Op. 06-0220.

RESEARCH REFERENCES

ALR. Validity and construction of gun control laws. 28 A.L.R.3d 845.

Application of statute or regulation dealing with registration or carrying of weapons to transient nonresident. 68 A.L.R.3d 1253.

Validity of state statutes restricting right of aliens to bear arms. 28 A.L.R.4th 1096.

Validity of state gun control legislation under state constitutional provisions securing the right to bear arms. 86 A.L.R.4th 931.

Am Jur. 79 Am. Jur. 2d, Weapons and Firearms §§ 4-39.

CJS. 94 C.J.S., Weapons §§ 5, 6.

§ 45-9-53. Exceptions; procedure for challenging ordinances; county or municipal programs to purchase weapons from citizens.

(1) This section and Section 45-9-51 do not affect the authority that a county or municipality may have under another law:

(a) To require citizens or public employees to be armed for personal or national defense, law enforcement, or another lawful purpose;

(b) To regulate the discharge of firearms within the limits of the county or municipality. A county or municipality may not apply a regulation relating to the discharge of firearms or other weapons in the extraterritorial jurisdiction of the county or municipality or in an area annexed by the county or municipality after September 1, 1981, if the firearm or other weapon is:

(i) A shotgun, air rifle or air pistol, BB gun or bow and arrow discharged:

1. On a tract of land of ten (10) acres or more and more than one hundred fifty (150) feet from a residence or occupied building located on another property; and

2. In a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or

(ii) A center fire or rim fire rifle or pistol or a muzzle-loading rifle or pistol of any caliber discharged:

1. On a tract of land of fifty (50) acres or more and more than three hundred (300) feet from a residence or occupied building located on another property; and

2. In a manner not reasonably expected to cause a projectile to cross the boundary of the tract;

(c) To regulate the use of property or location of businesses for uses therein pursuant to fire code, zoning ordinances, or land-use regulations, so long as such codes, ordinances and regulations are not used to circumvent the intent of Section 45-9-51 or paragraph (e) of this subsection;

(d) To regulate the use of firearms in cases of insurrection, riots and natural disasters in which the city finds such regulation necessary to protect the health and safety of the public. However, the provisions of this section shall not apply to the lawful possession of firearms, ammunition or components of firearms or ammunition;

(e) To regulate the storage or transportation of explosives in order to protect the health and safety of the public, with the exception of black powder which is exempt up to twenty-five (25) pounds per private residence and fifty (50) pounds per retail dealer;

(f) To regulate the carrying of a firearm at: (i) a public park or at a public meeting of a county, municipality or other governmental body; (ii) a political rally, parade or official political meeting; or (iii) a nonfirearm-related school, college or professional athletic event; or

(g) To regulate the receipt of firearms by pawnshops.

(2) The exception provided by subsection (1)(f) of this section does not apply if the firearm was in or carried to and from an area designated for use in a lawful hunting, fishing or other sporting event and the firearm is of the type commonly used in the activity.

(3) This section and Section 45-9-51 do not authorize a county or municipality or their officers or employees to act in contravention of Section 33-7-303.

(4) No county or a municipality may use the written notice provisions of Section 45-9-101(13) to prohibit concealed firearms on property under their control except:

(a) At a location listed in Section 45-9-101(13) indicating that a license issued under Section 45-9-101 does not authorize the holder to carry a firearm into that location, as long as the sign also indicates that carrying a firearm is unauthorized only for license holders without a training endorsement or that it is a location included in Section 97-37-7(2) where carrying a firearm is unauthorized for all license holders; and

(b) At any location under the control of the county or municipality aside from a location listed in subsection (1)(f) of this section or Section 45-9-101(13) indicating that the possession of a firearm is prohibited on the premises, as long as the sign also indicates that it does not apply to a person properly licensed under Section 45-9-101 or Section 97-37-7(2) to carry a concealed firearm or to a person lawfully carrying a firearm that is not concealed.

(5)(a) A citizen of this state, or a person licensed to carry a concealed pistol or revolver under Section 45-9-101, or a person licensed to carry a concealed pistol or revolver with the endorsement under Section 97-37-7, who is adversely affected by an ordinance or posted written notice adopted by a county or municipality in violation of this section may file suit for declarative and injunctive relief against a county or municipality in the circuit court which shall have jurisdiction over the county or municipality where the violation of this section occurs.

(b) Before instituting suit under this subsection, the party adversely impacted by the ordinance or posted written notice shall notify the Attorney

General in writing of the violation and include evidence of the violation. The Attorney General shall, within thirty (30) days, investigate whether the county or municipality adopted an ordinance or posted written notice in violation of this section and provide the chief administrative officer of the county or municipality notice of his findings, including, if applicable, a description of the violation and specific language of the ordinance or posted written notice found to be in violation. The county or municipality shall have thirty (30) days from receipt of that notice to cure the violation. If the county or municipality fails to cure the violation within that thirty-day time period, a suit under paragraph (a) of this subsection may proceed. The findings of the Attorney General shall constitute a "Public Record" as defined by the Mississippi Public Records Act of 1983, Section 25-61-1 et seq.

(c) If the circuit court finds that a county or municipality adopted an ordinance or posted written notice in violation of this section and failed to cure that violation in accordance with paragraph (b) of this subsection, the circuit court shall issue a permanent injunction against a county or municipality prohibiting it from enforcing the ordinance or posted written notice. Any elected county or municipal official under whose jurisdiction the violation occurred may be civilly liable in a sum not to exceed One Thousand Dollars ($1,000.00), plus all reasonable attorney's fees and costs incurred by the party bringing the suit. Public funds may not be used to defend or reimburse officials who are found by the court to have violated this section.

(d) It shall be an affirmative defense to any claim brought against an elected county or municipal official under this subsection (5) that the elected official:

(i) Did not vote in the affirmative for the adopted ordinance or posted written notice deemed by the court to be in violation of this section;

(ii) Did attempt to take recorded action to cure the violation as noticed by the Attorney General in paragraph (b) of this subsection; or

(iii) Did attempt to take recorded action to rescind the ordinance or remove the posted written notice deemed by the court to be in violation of this section.

(6) No county or municipality or their officers or employees may participate in any program in which individuals are given a thing of value provided by another individual or other entity in exchange for surrendering a firearm to the county, municipality or other governmental body unless:

(a) The county or municipality has adopted an ordinance authorizing the participation of the county or municipality, or participation by an officer or employee of the county or municipality in such a program; and

(b) Any ordinance enacted pursuant to this section must require that any firearm received shall be offered for sale at auction as provided by Sections 19-3-85 and 21-39-21 to federally licensed firearms dealers, with the proceeds from such sale at auction reverting to the general operating fund of the county, municipality or other governmental body. Any firearm remaining in possession of the county, municipality or other governmental body after attempts to sell at auction may be disposed of in a manner that the body deems appropriate.

SOURCES: Laws, 1986, ch. 471, § 2; Laws, 2006, ch. 450, § 1; Laws, 2014, ch. 443, § 4; Laws, 2015, ch. 433, § 4, eff from and after passage (approved Apr. 9, 2015.)

Amendment Notes — The 2014 amendment, in (1)(b)(ii)2, inserted "the" following "to cross the boundary of"; in (1)(c), substituted "paragraph" for "subparagraph" and "subsection" for "section" at the end; in (1)(d), substituted "ammunition or components of firearms or ammunition" for "in the home, place of business or in transit to and from the home or place of business"; and added (3), (4), (5), and (6).

The 2015 amendment, in the introductory paragraph of (4), inserted "concealed," and deleted "in the locations listed in subsection (1)(f) of this section. Nothing in this subsection shall limit the ability of a county or municipality to post signs" from the end.

Cross References — Constitutional right to keep and bear arms, see Miss. Const. Art. 3, § 12.

ATTORNEY GENERAL OPINIONS

Nothing in the Section 21-8-17 or any other legal authority can be interpreted to grant the mayor of a mayor-council municipality the authority to ban gun shows by the issuance of an executive order or otherwise. White, June 2, 2006, A.G. Op. 06-0220.

A city council has no authority to ban gun shows on the Mississippi State Fairgrounds. White, June 2, 2006, A.G. Op. 06-0220.

RESEARCH REFERENCES

ALR. Validity and construction of gun control laws. 28 A.L.R.3d 845.

Application of statute or regulation dealing with registration or carrying of weapons to transient nonresident. 68 A.L.R.3d 1253.

Validity of state statutes restricting right of aliens to bear arms. 28 A.L.R.4th 1096.

Validity of state gun control legislation under state constitutional provisions securing the right to bear arms. 86 A.L.R.4th 931.

Am Jur. 79 Am. Jur. 2d, Weapons and Firearms §§ 4-39.

30 Am. Jur. Trials 1, Unloaded Gun Litigation.

CJS. 94 C.J.S., Weapons §§ 5, 6.

§ 45-9-55. Employer not permitted to prohibit transportation or storage of firearms on employer property; exceptions; certain immunity for employer.

(1) Except as otherwise provided in subsection (2) of this section, a public or private employer may not establish, maintain, or enforce any policy or rule that has the effect of prohibiting a person from transporting or storing a firearm in a locked vehicle in any parking lot, parking garage, or other designated parking area.

(2) A private employer may prohibit an employee from transporting or storing a firearm in a vehicle in a parking lot, parking garage, or other parking area the employer provides for employees to which access is restricted or limited through the use of a gate, security station or other means of restricting or limiting general public access onto the property.

(3) This section shall not apply to vehicles owned or leased by an employer and used by the employee in the course of his business.

(4) This section does not authorize a person to transport or store a firearm on any premises where the possession of a firearm is prohibited by state or federal law.

(5) A public or private employer shall not be liable in a civil action for damages resulting from or arising out of an occurrence involving the transportation, storage, possession or use of a firearm covered by this section.

SOURCES: Laws, 2006, ch. 450, § 2, eff from and after July 1, 2006.

§ 45-9-57. Regulation by county of discharge of any firearm within platted subdivision.

A county may regulate the discharge of any firearm or weapon, other than a BB gun, within any platted subdivision. However, no county may prohibit the discharge of any firearm or weapon on land, if such firearm or weapon is discharged in a manner not reasonably expected to cause a projectile from such firearm or weapon to travel across any property line without permission of the property owner.

SOURCES: Laws, 2010, ch. 523, § 3, eff from and after July 1, 2010.

LICENSE TO CARRY CONCEALED PISTOL OR REVOLVER

SEC.

45-9-101. License to carry stun gun, concealed pistol or revolver; license fees; exemptions; no license required to carry pistol or revolver in purse, briefcase, fully enclosed case, etc.

45-9-103. Federal firearm reporting.

§ 45-9-101. License to carry stun gun, concealed pistol or revolver; license fees; exemptions; no license required to carry pistol or revolver in purse, briefcase, fully enclosed case, etc.

(1)(a) Except as otherwise provided, the Department of Public Safety is authorized to issue licenses to carry stun guns, concealed pistols or revolvers to persons qualified as provided in this section. Such licenses shall be valid throughout the state for a period of five (5) years from the date of issuance. Any person possessing a valid license issued pursuant to this section may carry a stun gun, concealed pistol or concealed revolver.

(b) The licensee must carry the license, together with valid identification, at all times in which the licensee is carrying a stun gun, concealed pistol or revolver and must display both the license and proper identification upon demand by a law enforcement officer. A violation of the provisions of this paragraph (b) shall constitute a noncriminal violation with a penalty of Twenty-five Dollars ($25.00) and shall be enforceable by summons.

(2) The Department of Public Safety shall issue a license if the applicant:

(a) Is a resident of the state and has been a resident for twelve (12) months or longer immediately preceding the filing of the application. However, this residency requirement may be waived if the applicant possesses a valid permit from another state, is active military personnel stationed in Mississippi, or is a retired law enforcement officer establishing residency in the state;

(b)(i) Is twenty-one (21) years of age or older; or

(ii) Is at least eighteen (18) years of age but not yet twenty-one (21) years of age and the applicant:

1. Is a member or veteran of the United States Armed Forces, including National Guard or Reserve; and

2. Holds a valid Mississippi driver's license or identification card issued by the Department of Public Safety;

(c) Does not suffer from a physical infirmity which prevents the safe handling of a stun gun, pistol or revolver;

(d) Is not ineligible to possess a firearm by virtue of having been convicted of a felony in a court of this state, of any other state, or of the United States without having been pardoned for same;

(e) Does not chronically or habitually abuse controlled substances to the extent that his normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses controlled substances to the extent that his faculties are impaired if the applicant has been voluntarily or involuntarily committed to a treatment facility for the abuse of a controlled substance or been found guilty of a crime under the provisions of the Uniform Controlled Substances Law or similar laws of any other state or the United States relating to controlled substances within a three-year period immediately preceding the date on which the application is submitted;

(f) Does not chronically and habitually use alcoholic beverages to the extent that his normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages to the extent that his normal faculties are impaired if the applicant has been voluntarily or involuntarily committed as an alcoholic to a treatment facility or has been convicted of two (2) or more offenses related to the use of alcohol under the laws of this state or similar laws of any other state or the United States within the three-year period immediately preceding the date on which the application is submitted;

(g) Desires a legal means to carry a stun gun, concealed pistol or revolver to defend himself;

(h) Has not been adjudicated mentally incompetent, or has waited five (5) years from the date of his restoration to capacity by court order;

(i) Has not been voluntarily or involuntarily committed to a mental institution or mental health treatment facility unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of five (5) years;

(j) Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony unless three (3) years have elapsed since probation or any other conditions set by the court have been fulfilled;

(k) Is not a fugitive from justice; and

(*l*) Is not disqualified to possess a weapon based on federal law.

(3) The Department of Public Safety may deny a license if the applicant has been found guilty of one or more crimes of violence constituting a misdemeanor unless three (3) years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred prior to the date on which the application is submitted, or may revoke a license if the licensee has been found guilty of one or more crimes of violence within the preceding three (3) years. The department shall, upon notification by a law enforcement agency or a court and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime which would disqualify such person from having a license under this section, until final disposition of the case. The provisions of subsection (7) of this section shall apply to any suspension or revocation of a license pursuant to the provisions of this section.

(4) The application shall be completed, under oath, on a form promulgated by the Department of Public Safety and shall include only:

(a) The name, address, place and date of birth, race, sex and occupation of the applicant;

(b) The driver's license number or social security number of applicant;

(c) Any previous address of the applicant for the two (2) years preceding the date of the application;

(d) A statement that the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;

(e) A statement that the applicant has been furnished a copy of this section and is knowledgeable of its provisions;

(f) A conspicuous warning that the application is executed under oath and that a knowingly false answer to any question, or the knowing submission of any false document by the applicant, subjects the applicant to criminal prosecution; and

(g) A statement that the applicant desires a legal means to carry a stun gun, concealed pistol or revolver to defend himself.

(5) The applicant shall submit only the following to the Department of Public Safety:

(a) A completed application as described in subsection (4) of this section;

(b) A full-face photograph of the applicant taken within the preceding thirty (30) days in which the head, including hair, in a size as determined by the Department of Public Safety, except that an applicant who is younger than twenty-one (21) years of age must submit a photograph in profile of the applicant;

(c) A nonrefundable license fee of Eighty Dollars ($80.00). Costs for processing the set of fingerprints as required in paragraph (d) of this subsection shall be borne by the applicant. Honorably retired law enforcement officers, disabled veterans and active duty members of the Armed Forces of the United States shall be exempt from the payment of the license fee;

(d) A full set of fingerprints of the applicant administered by the Department of Public Safety; and

(e) A waiver authorizing the Department of Public Safety access to any records concerning commitments of the applicant to any of the treatment facilities or institutions referred to in subsection (2) and permitting access to all the applicant's criminal records.

(6)(a) The Department of Public Safety, upon receipt of the items listed in subsection (5) of this section, shall forward the full set of fingerprints of the applicant to the appropriate agencies for state and federal processing.

(b) The Department of Public Safety shall forward a copy of the applicant's application to the sheriff of the applicant's county of residence and, if applicable, the police chief of the applicant's municipality of residence. The sheriff of the applicant's county of residence and, if applicable, the police chief of the applicant's municipality of residence may, at his discretion, participate in the process by submitting a voluntary report to the Department of Public Safety containing any readily discoverable prior information that he feels may be pertinent to the licensing of any applicant. The reporting shall be made within thirty (30) days after the date he receives the copy of the application. Upon receipt of a response from a sheriff or police chief, such sheriff or police chief shall be reimbursed at a rate set by the department.

(c) The Department of Public Safety shall, within forty-five (45) days after the date of receipt of the items listed in subsection (5) of this section:

(i) Issue the license;

(ii) Deny the application based solely on the ground that the applicant fails to qualify under the criteria listed in subsections (2) and (3) of this section. If the Department of Public Safety denies the application, it shall notify the applicant in writing, stating the ground for denial, and the denial shall be subject to the appeal process set forth in subsection (7); or

(iii) Notify the applicant that the department is unable to make a determination regarding the issuance or denial of a license within the forty-five-day period prescribed by this subsection, and provide an estimate of the amount of time the department will need to make the determination.

(d) In the event a legible set of fingerprints, as determined by the Department of Public Safety and the Federal Bureau of Investigation, cannot be obtained after a minimum of two (2) attempts, the Department of Public Safety shall determine eligibility based upon a name check by the Mississippi Highway Safety Patrol and a Federal Bureau of Investigation name check conducted by the Mississippi Highway Safety Patrol at the request of the Department of Public Safety.

(7)(a) If the Department of Public Safety denies the issuance of a license, or suspends or revokes a license, the party aggrieved may appeal such denial, suspension or revocation to the Commissioner of Public Safety, or his authorized agent, within thirty (30) days after the aggrieved party receives written notice of such denial, suspension or revocation. The Commissioner of Public Safety, or his duly authorized agent, shall rule upon such appeal within thirty (30) days after the appeal is filed and failure to rule within this thirty-day period shall constitute sustaining such denial, suspension or revocation. Such review shall be conducted pursuant to such reasonable rules and regulations as the Commissioner of Public Safety may adopt.

(b) If the revocation, suspension or denial of issuance is sustained by the Commissioner of Public Safety, or his duly authorized agent pursuant to paragraph (a) of this subsection, the aggrieved party may file within ten (10) days after the rendition of such decision a petition in the circuit or county court of his residence for review of such decision. A hearing for review shall be held and shall proceed before the court without a jury upon the record made at the hearing before the Commissioner of Public Safety or his duly authorized agent. No such party shall be allowed to carry a stun gun, concealed pistol or revolver pursuant to the provisions of this section while any such appeal is pending.

(8) The Department of Public Safety shall maintain an automated listing of license holders and such information shall be available online, upon request, at all times, to all law enforcement agencies through the Mississippi Crime Information Center. However, the records of the department relating to applications for licenses to carry stun guns, concealed pistols or revolvers and records relating to license holders shall be exempt from the provisions of the Mississippi Public Records Act of 1983, and shall be released only upon order of a court having proper jurisdiction over a petition for release of the record or records.

(9) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after having a license lost or destroyed, the licensee shall notify the Department of Public Safety in writing of such change or loss. Failure to notify the Department of Public Safety pursuant to the provisions of this subsection shall constitute a noncriminal violation with a penalty of Twenty-five Dollars ($25.00) and shall be enforceable by a summons.

(10) In the event that a stun gun, concealed pistol or revolver license is lost or destroyed, the person to whom the license was issued shall comply with the provisions of subsection (9) of this section and may obtain a duplicate, or substitute thereof, upon payment of Fifteen Dollars ($15.00) to the Department of Public Safety, and furnishing a notarized statement to the department that such license has been lost or destroyed.

(11) A license issued under this section shall be revoked if the licensee becomes ineligible under the criteria set forth in subsection (2) of this section.

(12)(a) No less than ninety (90) days prior to the expiration date of the license, the Department of Public Safety shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the department. The licensee must renew his license on or before the expiration date by filing with the department the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and a full set of fingerprints administered by the Department of Public Safety or the sheriff of the county of residence of the licensee. The first renewal may be processed by mail and the subsequent renewal must be made in person. Thereafter every other renewal may be processed by mail to assure that the applicant must appear in person every ten (10) years for the purpose of obtaining a new photograph.

(i) Except as provided in this subsection, a renewal fee of Forty Dollars ($40.00) shall also be submitted along with costs for processing the fingerprints;

(ii) Honorably retired law enforcement officers, disabled veterans and active duty members of the Armed Forces of the United States shall be exempt from the renewal fee; and

(iii) The renewal fee for a Mississippi resident aged sixty-five (65) years of age or older shall be Twenty Dollars ($20.00).

(b) The Department of Public Safety shall forward the full set of fingerprints of the applicant to the appropriate agencies for state and federal processing. The license shall be renewed upon receipt of the completed renewal application and appropriate payment of fees.

(c) A licensee who fails to file a renewal application on or before its expiration date must renew his license by paying a late fee of Fifteen Dollars ($15.00). No license shall be renewed six (6) months or more after its expiration date, and such license shall be deemed to be permanently expired. A person whose license has been permanently expired may reapply for licensure; however, an application for licensure and fees pursuant to subsection (5) of this section must be submitted, and a background investigation shall be conducted pursuant to the provisions of this section.

(13) No license issued pursuant to this section shall authorize any person to carry a stun gun, concealed pistol or revolver into any place of nuisance as defined in Section 95-3-1, Mississippi Code of 1972; any police, sheriff or highway patrol station; any detention facility, prison or jail; any courthouse; any courtroom, except that nothing in this section shall preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his courtroom; any polling place; any meeting place of the governing body of any governmental entity; any meeting of the Legislature or a committee thereof; any school, college or professional athletic event not related to firearms; any portion of an establishment, licensed to dispense alcoholic beverages for consumption on the premises, that is primarily devoted to dispensing alcoholic beverages; any portion of an establishment in which beer or light wine is consumed on the premises, that is primarily devoted to such purpose; any elementary or secondary school facility; any junior college, community college, college or university facility unless for the purpose of participating in any authorized firearms-related activity; inside the passenger terminal of any airport, except that no person shall be prohibited from carrying any legal firearm into the terminal if the firearm is encased for shipment, for purposes of checking such firearm as baggage to be lawfully transported on any

aircraft; any church or other place of worship; or any place where the carrying of firearms is prohibited by federal law. In addition to the places enumerated in this subsection, the carrying of a stun gun, concealed pistol or revolver may be disallowed in any place in the discretion of the person or entity exercising control over the physical location of such place by the placing of a written notice clearly readable at a distance of not less than ten (10) feet that the "carrying of a pistol or revolver is prohibited." No license issued pursuant to this section shall authorize the participants in a parade or demonstration for which a permit is required to carry a stun gun, concealed pistol or revolver.

(14) A law enforcement officer as defined in Section 45-6-3, chiefs of police, sheriffs and persons licensed as professional bondsmen pursuant to Chapter 39, Title 83, Mississippi Code of 1972, shall be exempt from the licensing requirements of this section. The licensing requirements of this section do not apply to the carrying by any person of a stun gun, pistol or revolver, knife, or other deadly weapon that is not concealed as defined in Section 97-37-1.

(15) Any person who knowingly submits a false answer to any question on an application for a license issued pursuant to this section, or who knowingly submits a false document when applying for a license issued pursuant to this section, shall, upon conviction, be guilty of a misdemeanor and shall be punished as provided in Section 99-19-31, Mississippi Code of 1972.

(16) All fees collected by the Department of Public Safety pursuant to this section shall be deposited into a special fund hereby created in the State Treasury and shall be used for implementation and administration of this section. After the close of each fiscal year, the balance in this fund shall be certified to the Legislature and then may be used by the Department of Public Safety as directed by the Legislature.

(17) All funds received by a sheriff or police chief pursuant to the provisions of this section shall be deposited into the general fund of the county or municipality, as appropriate, and shall be budgeted to the sheriff's office or police department as appropriate.

(18) Nothing in this section shall be construed to require or allow the registration, documentation or providing of serial numbers with regard to any stun gun or firearm.

(19) Any person holding a valid unrevoked and unexpired license to carry stun guns, concealed pistols or revolvers issued in another state shall have such license recognized by this state to carry stun guns, concealed pistols or revolvers. The Department of Public Safety is authorized to enter into a reciprocal agreement with another state if that state requires a written agreement in order to recognize licenses to carry stun guns, concealed pistols or revolvers issued by this state.

(20) The provisions of this section shall be under the supervision of the Commissioner of Public Safety. The commissioner is authorized to promulgate reasonable rules and regulations to carry out the provisions of this section.

(21) For the purposes of this section, the term "stun gun" means a portable device or weapon from which an electric current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to

incapacitate temporarily, injure, momentarily stun, knock out, cause mental disorientation or paralyze.

(22)(a) From and after January 1, 2016, the Commissioner of Public Safety shall promulgate rules and regulations which provide that licenses authorized by this section for honorably retired law enforcement officers and honorably retired correctional officers from the Mississippi Department of Corrections shall (i) include the words "retired law enforcement officer" on the front of the license, and (ii) that the license itself have a red background to distinguish it from other licenses issued under this section.

(b) An honorably retired law enforcement officer and honorably retired correctional officer shall provide the following information to receive the license described in this section: (i) a letter, with the official letterhead of the agency or department from which such officer is retiring, which explains that such officer is honorably retired, and (ii) a letter with the official letterhead of the agency or department, which explains that such officer has completed a certified law enforcement training academy.

(23) A disabled veteran who seeks to qualify for an exemption under this section shall be required to provide, as proof of service-connected disability, verification from the United States Department of Veterans Affairs.

(24) No license shall be required under this section for a loaded or unloaded pistol or revolver carried in a purse, handbag, satchel, other similar bag or briefcase or fully enclosed case.

SOURCES: Laws, 1991, ch. 609, § 1; Laws, 1997, ch. 470, § 1; Laws, 2004, ch. 430, § 1; Laws, 2007, ch. 507, § 1; Laws, 2008, ch. 459, § 1; Laws, 2009, ch. 518, § 1; Laws, 2010, ch. 480, § 2; Laws, 2012, ch. 372, § 1; Laws, 2013, ch. 307, § 2; Laws, 2013, ch. 308, § 4; Laws, 2014, ch. 307, § 1; Laws, 2015, ch. 433, § 2; Laws, 2015, ch. 445, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 2 of ch. 307, Laws of 2013, effective from and after passage (approved March 4, 2013), amended this section. Section 4 of ch. 308, Laws of 2013, effective from and after July 1, 2013 (approved March 4, 2013), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

Section 2 of ch. 433, Laws of 2015, effective upon passage (approved April 9, 2015), amended this section. Section 1 of ch. 445, Laws of 2015, effective July 1, 2015 (approved April 9, 2015) also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 17, 2015, meeting of the Committee.

Amendment Notes — The 2014 amendment inserted "and disabled veterans" following "law enforcement officers" in the last sentence of (5)(c) and in (12)(a)(ii).

The first 2015 amendment (ch. 433) substituted "if the applicant" for "provided the applicant" in (2)(a); and in (2)(b)(ii), inserted "including National Guard or Reserve" in 1, and deleted "with the 'Veteran' designation" following "identification card" in 2.

The second 2015 amendment (ch. 445) added "Except as otherwise provided" at the beginning of (1)(a); in (5)(c), substituted "Eighty Dollars ($80.00)" for "One Hundred Dollars ($ 100.00)," inserted "and active duty members of the Armed Forces of the United States" and made a related stylistic change; in (12)(a), substituted "Forty Dollars ($40.00)" for "Fifty Dollars ($50.00)" in (i) inserted "and active duty members of the Armed Forces of the United States" and made a related stylistic change in (ii), and substituted "Twenty Dollars ($20.00)" for "Twenty-five Dollars ($ 25.00)" in (iii); and added (22) through (24).

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Applicability of §§ 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 to fund created pursuant to this section, see § 27-104-27.

Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Carrying concealed weapon generally, see § 97-37-1.

Private information of persons possessing a weapon permit issued under this section or Section 97-37-7 exempt from Mississippi Public Records Act, see § 25-61-11.1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

A person may legally carry a weapon within a motor vehicle regardless of whether or not he has obtained a permit. Cooke, Dec. 4, 1991, A.G. Op. #91-0898.

Miss. Code Section 45-9-101 allows permits for carrying concealed weapons by general public. Bowen, Jan. 14, 1993, A.G. Op. #92-0934.

Pursuant to Section 45-9-101(14) a sworn police officer does not need a permit to carry a concealed weapon while off duty. Schwing, July 26, 1996, A.G. Op. #96-0488.

The authority of a professional bondsman to carry a concealed weapon is limited by this statute. Doggette, August 28, 1998, A.G. Op. #98-0493.

Any person who obtains a license pursuant to the statute may carry a concealed pistol or concealed revolver. Carrithers, October 27, 1998, A.G. Op. #98-0629.

Subsection (2)(j) of this section allows the Department of Public Safety to issue a firearm permit to a person who pled guilty to a felony if the court non-adjudicated the offense or suspended the imposition of a sentence; however, if the court accepts a guilty plea, sentences the defendant and then suspends the sentence, the defendant would be a convicted felon and would be prohibited from receiving a license under subsection (2)(d) of this section. Younger, January 29, 1999, A.G. Op. #99-0014.

The Mississippi Department of Public Safety may not recognize a Louisiana first offender pardon for the purposes of issuing a weapons permit. Spann, Jan. 25, 2002, A.G. Op. #02-0012.

An individual who has received a relief of disability under 18 U.S.C. § 925(c) is not disqualified from receiving a firearms permit as a result of a federal felony conviction. Busby, Mar. 8, 2002, A.G. Op. #02-0092.

Local businesses may prohibit a "bounty hunter" from entering the place of business if he is carrying a concealed weapon. Page, May 24, 2002, A.G. Op. #02-0299.

A sworn law enforcement officer does not need a permit to carry a concealed weapon while off duty, however, an officer may not use public property, i.e., uniform, weapon, badge, automobile or other county-owned equipment while working for a private employer. Thames, Dec. 20, 2002, A.G. Op. #02-0722.

RESEARCH REFERENCES

ALR. Validity and construction of gun control laws. 28 A.L.R.3d 845.

Who is entitled to permit to carry concealed weapon. 51 A.L.R.3d 504.

Application of statute or regulation dealing with registration or carrying of weapons to transient nonresident. 68 A.L.R.3d 1253.

Am Jur. 79 Am. Jur. 2d, Weapons and Firearms § 17.

CJS. 94 C.J.S., Weapons §§ 5, 6.

§ 45-9-103. Federal firearm reporting.

(1) In this section, "federal prohibited-person information" means information that identifies an individual as:

(a) A person who has been judicially determined by a court as a person with mental illness or person with an intellectual disability under Title 41, Chapter 21, Mississippi Code of 1972, whether ordered for inpatient treatment, outpatient treatment, day treatment, night treatment or home health services treatment;

(b) A person acquitted in a criminal case by reason of insanity or on a ground of intellectual disability, without regard to whether the person is ordered by a court to receive inpatient treatment or residential care under Section 99-13-7;

(c) An adult individual for whom a court has appointed a guardian or conservator under Title 93, Chapter 13, based on the determination that the person is incapable of managing his own estate due to mental weakness; or

(d) A person determined to be incompetent to stand trial by a court pursuant to Rule 9.06 of the Mississippi Rules of Circuit and County Court Practice.

(2) The Department of Public Safety by rule shall establish a procedure to provide federal prohibited-person information to the Federal Bureau of Investigation for use with the National Instant Criminal Background Check System. Except as otherwise provided by state law, the department may disseminate federal prohibited-person information under this subsection only to the extent necessary to allow the Federal Bureau of Investigation to collect and maintain a list of persons who are prohibited under federal law from engaging in certain activities with respect to a firearm.

(3) The department shall grant access to a person's own federal prohibited-person information to the person who is the subject of the information.

(4) Federal prohibited-person information maintained by the department is confidential information for the use of the department and, except as otherwise provided by this section and other state law, is not a public record and may not be disseminated by the department.

(5) The department by rule shall establish a procedure to correct department records and transmit those corrected records to the Federal Bureau of Investigation when a person provides:

(a) A copy of a judicial order or finding under Section 93-13-151 that a person has been restored to reason;

(b) Proof that the person has obtained notice of relief from disabilities under 18 USC, Section 925; or

(c) A copy of a judicial order of relief from a firearms disability under Section 97-37-5(4).

SOURCES: Laws, 2013, ch. 384, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (1)(a) by substituting "a person with mental illness or person with an intellectual disability" for "a mentally ill or mentally retarded person." The Joint Committee ratified the correction at its August 1, 2013, meeting.

PURCHASE OF SIDEARMS BY RETIRING LAW ENFORCEMENT PERSONNEL

SEC.
45-9-131. Purchase of sidearm by retiring law enforcement officer or spouse of law enforcement officer killed in line of duty.
45-9-133. Retention of sidearm by retiring law enforcement officer of Mississippi Department of Transportation.

§ 45-9-131. Purchase of sidearm by retiring law enforcement officer or spouse of law enforcement officer killed in line of duty.

Upon approval of the governing authority of the municipality or county, a member of any municipal or county law enforcement agency who retires under any state retirement system or the spouse of a law enforcement officer who is killed in the line of duty may be allowed to purchase as his or her personal property one (1) sidearm which was issued to the law enforcement officer by the law enforcement agency from which he or she retired or by whom he or she was employed at the time of death. The governing authority of the municipality or county shall determine the amount to be paid for the firearm by the retiring member of the law enforcement agency or the spouse of the law enforcement officer.

SOURCES: Laws, 1995, ch. 462, § 1; Laws, 2013, ch. 381, § 1, eff from and after passage (approved Mar. 20, 2013.)

ATTORNEY GENERAL OPINIONS

There is no fair market value requirement placed on a firearm when it is sold to a law enforcement officer who is retiring under the conditions set forth in the statute; the sale will not be considered an illegal donation if the firearm is sold for less than fair market value so long as the retirement conditions in the statute are met. Robichaux, March 10, 2000, A.G. Op. #2000-0124.

§ 45-9-133. Retention of sidearm by retiring law enforcement officer of Mississippi Department of Transportation.

Each person employed as a law enforcement officer by the Mississippi Department of Transportation who retires for superannuation or for reason of disability under the Public Employees' Retirement System shall be allowed to retain as his personal property, one (1) sidearm which was issued to such law enforcement officer.

SOURCES: Laws, 2010, ch. 550, § 2, eff from and after passage (approved Apr. 28, 2010.)

DOCKET OF DEADLY WEAPONS SEIZED

SEC.
45-9-151. Docket of deadly weapons seized.

§ 45-9-151. Docket of deadly weapons seized.

(1) Every law enforcement agency of the state or of any political subdivision thereof shall maintain a docket which shall contain a record of all deadly weapons that are seized by employees of such law enforcement agency. Such docket shall include the name of the arresting officer, the date of the arrest, the charge upon which the seizure was based, the name of the person from whom such deadly weapon was seized, the physical description of the deadly weapon, the serial number, if any, of the deadly weapon, and the chain of custody of the deadly weapon.

(2) Every deadly weapon seized by any law enforcement officer shall be entered into the docket required to be maintained pursuant to subsection (1) of this section within ten (10) days after the occurrence of such seizure.

(3) If the court orders any seized deadly weapon to be forfeited and disposed of by sale, the proceeds of such sale shall be deposited into the general fund of the governmental entity of which such law enforcement agency is a part and shall be budgeted to such law enforcement agency. The provisions of this subsection shall not apply to deadly weapons that are subject to forfeiture pursuant to Section 41-29-153, Mississippi Code of 1972.

(4) Any law enforcement officer who knowingly fails to cause a seized deadly weapon to be entered into the docket within the time limit specified in subsection (2) of this section shall be guilty of a misdemeanor and, upon conviction thereof, may be fined not more than One Thousand Dollars ($1,000.00). A conviction under the provisions of this section shall not be used as the basis for removal of a person from elective office.

SOURCES: Laws, 1991, ch. 609, § 2, eff from and after July 1, 1991.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

The manner in which deadly weapons should be disposed of depends on the manner in which they were seized; specifically, Section 41-29-177 provides for the manner in which a weapon that has been seized and forfeited under the Uniform Controlled Substances Law should be disposed of; for all other deadly weapons that are seized, Section 45-9-151 should be followed; Section 21-39-21 is a general statute with regard to lost, stolen, abandoned or misplaced property, but Section 45-9-151 is specific to deadly weapons and therefore the more specific statute should be followed. Malta, May 26, 2000, A.G. Op. #2000-0221.

A law enforcement agency or any political subdivision of the state that is required to maintain a docket of deadly weapons seized in accordance with this section may keep such a docket via computer. Please note that a computer-docket must still be accessible to the public and comply with the Public Records Act. Acey, Dec. 19, 2003, A.G. Op. 03-0664.

RESEARCH REFERENCES

ALR. Forfeiture of property for unlawful use before trial of individual offender. 3 A.L.R.2d 738.

CHAPTER 10

Novelty Lighters

Sec.
45-10-1. Definition.
45-10-3. Prohibition; penalty.
45-10-5. Exception.
45-10-7. Enforcement.

§ 45-10-1. Definition.

For purposes of this chapter, "novelty lighter" means a mechanical or electrical device typically used for lighting cigarettes, cigars or pipes, grills, fireplaces, campfires or campfire stoves that is designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food or beverage, or similar articles, or that plays musical notes, or has flashing lights for entertainment or has other entertaining features. A novelty lighter may operate on any fuel, including butane, isobutane or liquid fuel. "Novelty lighter" does not include:

(a) A lighter manufactured prior to January 1, 1980;

(b) A lighter incapable of being fueled or lacking a device necessary to produce combustion or a flame;

(c) Standard disposable and refillable lighters that are printed or decorated with logos, labels, decals or artwork, or heat shrinkable sleeves.

SOURCES: Laws, 2010, ch. 354, § 1, eff from and after July 1, 2010.

§ 45-10-3. Prohibition; penalty.

A person may not sell at retail, offer for retail sale or distribute for retail sale or promotion in this state a novelty lighter. A person who violates this section commits a civil violation for which a fine of not more than Five Hundred Dollars ($500.00) may be imposed.

SOURCES: Laws, 2010, ch. 354, § 2, eff from and after July 1, 2010.

§ 45-10-5. Exception.

The prohibition specified in Section 45-10-3 does not apply to the transportation of novelty lighters through this state or the storage of novelty lighters in a warehouse or distribution center in this state that is closed to the public for purposes of retail sales.

SOURCES: Laws, 2010, ch. 354, § 3, eff from and after July 1, 2010.

§ 45-10-7. Enforcement.

This section may be enforced by the State Fire Marshal's office; a state, county or municipal law enforcement officer; or a municipal code enforcement officer.

SOURCES: Laws, 2010, ch. 354, § 4, eff from and after July 1, 2010.

CHAPTER 11

Fire Protection Regulations, Fire Protection and Safety in Buildings

State Chief Deputy Fire Marshal and State Firefighter's School 45-11-1
Hotels, Schools and Other Public Buildings 45-11-21
Sale of Burglar Bars 45-11-71
Use of Safety Glazing Material in Hazardous Locations 45-11-81
Mississippi Fire Prevention Code 45-11-101
Uniform Minimum Training Standards for Firefighters 45-11-201
Mississippi Fire Personnel Minimum Standards and Certification Board 45-11-251
Burn Injury Notification 45-11-281
Truss Construction Emblems 45-11-301

STATE CHIEF DEPUTY FIRE MARSHAL AND STATE FIREFIGHTER'S SCHOOL

Sec.
45-11-1. Commissioner of Insurance as State Fire Marshal; appointment of State Chief Deputy Fire Marshal; qualifications, powers and duties; records of fires investigated; appointment of State Chief Assistant Deputy Fire Marshal.
45-11-2. Establishment and maintenance of registry of fire damages; provision of information by insurance companies and public agencies; promulgation of rules.
45-11-3. Proceedings in regard to dangerous or hazardous inflammable condition existing in building.
45-11-5. Tax on gross premium receipts of fire insurance policies to defray expenses of office of state chief deputy fire marshall and state fire academy; additional funding for municipal fire protection fund and county volunteer fire department fund.
45-11-7. State fire academy; executive director; division of fire services development.
45-11-8. State Fire Academy Advisory Board.
45-11-9. Fire Safety Education Division created; Commissioner of Insurance to administer; development of fire safety education program; rules and regulations.

§ 45-11-1. Commissioner of Insurance as State Fire Marshal; appointment of State Chief Deputy Fire Marshal; qualifications, powers and duties; records of fires investigated; appointment of State Chief Assistant Deputy Fire Marshal.

(1) The Commissioner of Insurance is by virtue of his office the State Fire Marshal and shall appoint the State Chief Deputy Fire Marshal who, along with his employees, shall be designated as a division of the Insurance Department. The State Chief Deputy Fire Marshal shall be a person qualified by experience and training and thoroughly knowledgeable in the areas of arson investigation and prevention, fire prevention, fire fighting and the training of firemen. The State Chief Deputy Fire Marshal shall serve at the will and pleasure of the Commissioner of Insurance.

(2) The State Chief Deputy Fire Marshal shall employ such deputy state fire marshals as are necessary and in accordance with availability of funds. Deputy fire marshals shall be deployed across the state in order to provide effective service to fire scenes.

(3) It shall be the duty of the State Chief Deputy Fire Marshal to investigate, by himself or his deputy, the origin of every fire occurring within the state to which his attention is called by the chief of the fire department or other law enforcement authority of any county or municipality. It shall also be his duty to investigate any case requested by any party in interest, whenever, in his judgment, there be sufficient evidence or circumstances indicating that such fire may be of incendiary origin. All county and municipal law enforcement authorities shall cooperate with the State Chief Deputy Fire Marshal in such investigation. This section shall not be construed to impair the duty and power of county and municipal law enforcement authorities to investigate any fire occurring within his or their jurisdiction.

(4)(a) The State Chief Deputy Fire Marshal and deputy state fire marshals shall have the following powers:

(i) To arrest without warrant any person or persons committing or attempting to commit any misdemeanor or felony within their presence or view but only such violations of law or violations of regulations adopted pursuant to this chapter or Chapter 49, Title 75, Mississippi Code of 1972;

(ii) To pursue and so arrest any person committing an offense as described under subparagraph (i) of this paragraph to and at any place in the State of Mississippi where he may go or be;

(iii) To execute all warrants and search warrants related to, and investigate any violation of the laws and regulations related to this chapter and Chapter 49, Title 75, Mississippi Code of 1972, and prevent, arrest and apprehend such violators; and

(iv) To aid and assist any peace officer of this state or any other state if requested, or in manhunts or natural disasters within the state, and upon the consent of the State Fire Marshal, within the jurisdiction of the called event.

(b) Nothing herein shall be construed as granting the State Chief Deputy Fire Marshal or deputy state fire marshals general police powers.

(c) All deputy state fire marshals hired on or after July 1, 2013, shall be required to complete or have completed the Law Enforcement Officers Training Program and shall meet the standards of the program.

(5) The State Chief Deputy Fire Marshal shall maintain in his office a record of all fires investigated by him or his deputy, including evidence obtained as to the origin of each such fire.

(6) Such record shall at all times be subject to inspection by any party of interest in the fire loss; provided, however, that no record or report of an investigation shall be subject to inspection pending such investigation or while same is in progress, and if a report of an investigation contains any evidence of arson or other felony, same shall not be subject to inspection by any person other than the district attorney and county attorney of the county in which

such evidence indicates that arson or other felony may have been committed, except upon the written approval of such district attorney or the order of a court of competent jurisdiction. Provided that in cases where a person has been arrested for the crimes of arson, attempted arson, or any other felony, the defendant or his attorney shall have access to these records. Any physical evidence of arson or other felony shall be delivered to the custody of the sheriff of the county wherein such fire occurred.

(7) The State Chief Deputy Fire Marshal may appoint, with the consent of the Commissioner of Insurance, a State Chief Assistant Deputy Fire Marshal, who shall have power, during the chief deputy's absence or inability to act due to any cause, to perform any and all of the duties of the chief deputy. The chief assistant deputy shall serve at the will and pleasure of the Commissioner of Insurance.

SOURCES: Codes, 1906, § 2660; Hemingway's 1917, § 5126; 1930, § 5189; 1942, § 5699; Laws, 1964, ch. 421, § 1; Laws, 1988, ch. 584, § 2; Laws, 1992, ch. 328, § 1; Laws, 2012, ch. 381, § 1; Laws, 2013, ch. 360, § 1, eff from and after July 1, 2013.

Cross References — Powers of municipalities in regard to fire prevention and fire companies, see §§ 21-19-21, 21-25-3.

Duty of State Fire Marshal to annually inspect child residential homes, see § 43-16-15.

Tax on gross insurance premium receipts to defray expenses of commissioner of insurance as State Fire Marshal, see § 45-11-5.

State Chief Deputy Fire Marshal's membership on the state fire academy advisory board, see § 45-11-8.

Duties of State Fire Marshal in connection with the Mississippi Fire Prevention Code, see §§ 45-11-101 et seq.

Fire safety inspections by State Fire Marshal, and payment of costs therefore, see § 45-11-105.

Powers and duties of the state fire marshal concerning the Liquefied Compressed Gas Equipment Inspection Law of Mississippi, see §§ 75-57-1 et seq.

Commissioner of insurance, see § 83-1-3.

Authorization for the board of supervisors of any county and the governing body of any municipality to contribute funds directly to any fire protection district or volunteer fire department serving the county or municipality to meet any standard established by the commissioner of insurance as provided in this section, see § 83-1-39.

Information required of insurers in case of fire losses, see § 83-13-21.

Crime of arson, see §§ 97-17-1 et seq.

Law Enforcement Officers Training Program, see §§ 45-6-1 et seq.

ATTORNEY GENERAL OPINIONS

No authority can be found which would require a municipal fire department to call the county arson investigator for fire within the city limits, or within the five mile jurisdiction of the department. Whitehead, Dec. 16, 2005, A.G. Op. 05-0597.

RESEARCH REFERENCES

ALR. Coverage of clause of fire policy insuring against explosion. 28 A.L.R.2d 995.

Am Jur. 35A Am. Jur. 2d, Fires § 4.

CJS. 36A C.J.S., Fires §§ 15, 16.

§ 45-11-2. Establishment and maintenance of registry of fire damages; provision of information by insurance companies and public agencies; promulgation of rules.

(1) The State Fire Marshall shall establish a registry of fire damage in all instances of fires causing Ten Thousand Dollars ($10,000.00) or more in property damage or in which any person is injured or loses his life.

(2) The registry so established shall be compiled and maintained in a manner whereby data may be retrieved by subject categories, including, but not limited to, the following:

(a) Geographic location;
(b) Damages in monetary terms;
(c) Insurer;
(d) Insured; and
(e) Tenant or resident.

(3) All insurance companies doing business in this state and all public agencies shall supply such information as may be demanded by the State Fire Marshall with respect to this section.

(4) The State Fire Marshall shall promulgate all rules necessary for the implementation of this section in accordance with the Administrative Procedures Act.

SOURCES: Laws, 1991, ch. 489, § 1, eff from and after Jan 1, 1992.

Cross References — Administrative Procedures Act, see §§ 25-43-1.101 et seq.

§ 45-11-3. Proceedings in regard to dangerous or hazardous inflammable condition existing in building.

Whenever the State Chief Deputy Fire Marshal, or his authorized representative, shall be advised by interested persons of a dangerous or hazardous inflammable condition existing in any building that would tend to impair the safety of persons or property, he shall take proper proceedings, including furnishing of all information in regard thereto to the Attorney General who shall, if he finds such evidence sufficient, bring injunctive proceedings to have the condition corrected. Provided that this section may not apply in any instance where local fire departments or other local agencies have the authority to correct such conditions.

SOURCES: Codes, 1906, § 2663; Hemingway's 1917, § 5129; 1930, § 5192; 1942, § 5702; Laws, 1964, ch. 421, § 3; Laws, 1988, ch. 584, § 3, eff from and after July 1, 1988.

Cross References — Powers of municipalities in regard to fire prevention and fire companies, see §§ 21-19-21, 21-25-3.

Tax on gross insurance premium receipts to defray expenses of commissioner of insurance as state fire marshal, see § 45-11-5.

Regulations concerning construction of places for public amusement, see § 45-11-45.

Proceedings in regard to violations of the Mississippi Fire Prevention Code, see § 45-11-109.

Authorization for the board of supervisors of any county and the governing body of any municipality to contribute funds directly to any fire protection district or volunteer fire department serving the county or municipality to meet any standard established by the commissioner of insurance as provided in this section, see § 83-1-39.

RESEARCH REFERENCES

ALR. Keeping or placing of gasoline, kerosene, or similar inflammable substances on premises as increase of hazard avoiding fire insurance policy. 26 A.L.R.2d 809.

Casual or temporary repairs, and the like, as constituting increase of hazard so as to avoid fire or other property damage insurance. 28 A.L.R.2d 757.

Applicability of "increase of hazard" clause in fire insurance policies to conditions occurring accidentally. 34 A.L.R.2d 717.

§ 45-11-5. Tax on gross premium receipts of fire insurance policies to defray expenses of office of state chief deputy fire marshall and state fire academy; additional funding for municipal fire protection fund and county volunteer fire department fund.

(1) Any expense, including office supplies, counsel fees, expenses of deputy, detective and officers, incurred by the Commissioner of Insurance in the performance of the duties imposed upon him by Sections 45-11-1 and 45-11-3, and the operation of the State Fire Academy, as provided in Section 45-11-7, shall be defrayed by all insurance companies, including stock, mutuals and reciprocals writing fire insurance, including the fire insurance components of automobile insurance, dwelling multiple peril insurance, farm multiple peril insurance and commercial multiple peril insurance, doing business in this state; and a tax of one-half of one percent (½ of 1%) of the gross premium receipts of these fire insurance policies is hereby levied for this purpose to be collected by the State Tax Commission in the same manner as the general tax on premiums is collected as provided in Section 27-15-107. In the case of indivisible multiple peril insurance policies when the fire portion of the policy is not specified, a tax of one-half of one percent (½ of 1%) is hereby levied on forty-five percent (45%) of the gross premium receipts of these policies.

(2) There is created a separate account known as the "State Fire Academy Fund" for support of the State Fire Academy. Not later than the fifteenth of the month succeeding the month in which taxes under subsection (1) are collected, the State Treasurer shall transfer into this account all taxes collected under subsection (1) for the operation of the State Fire Academy. The annual expenditure for the operation of the academy shall not exceed the amount in

the account; however, any unexpended funds remaining in the account at the close of the fiscal year may be carried over for use in the ensuing years.

(3)(a) A tax of one-half of one percent (½ of 1%) is hereby levied on the gross premium receipts of all insurance policies taxed in subsection (1).

(b) Not later than the fifteenth day of each month, the State Treasurer shall disburse the revenue from the tax levied in this subsection as follows:

(i) Fifty percent (50%) shall be transferred into the Municipal Fire Protection Fund in Section 83-1-37; and

(ii) Fifty percent (50%) shall be transferred to the County Volunteer Fire Department Fund in Section 83-1-39.

(4) All taxes shall be deposited into the treasury as provided in Section 7-7-21. The tax commission shall keep separate accounts of all taxes collected under this section and shall include these accounts in its annual report.

SOURCES: Codes, 1906, § 2665; Hemingway's 1917, § 5131; 1930, § 5194; 1942, § 5704; Laws, 1932, ch. 244; Laws, 1934, ch. 298; Laws, 1938, ch. 197; Laws, 1950, ch. 411; Laws, 1962, ch. 463, § 1; Laws, 1964, ch. 471, § 4; Laws, 1966, ch. 531, § 1; Laws, 1974, ch. 442 § 1; Laws, 1980, ch. 354; Laws, 1982, ch. 351, § 8; Laws, 1984, ch. 478, § 29; Laws, 1985, ch. 538, § 1; Laws, 1988, ch. 584, § 4; Laws, 1990 Ex Sess, ch. 62, § 1; Laws, 1994, ch. 502, § 3; Laws, 1994, ch. 577, § 1, eff from and after October 1, 1994.

Editor's Note — Laws of 1982, ch. 351, § 20, effective from and after July 1, 1982, provides as follows:

"SECTION 20. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under any section contained herein prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective, or shall thereafter be begun; and the provisions of any section contained herein are expressly continued in full force, effect and operation for the purpose of the assessment and collection of any taxes due or accrued thereunder prior to the date on which this act becomes effective, or the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides in part:

"SECTION 3. When used in [this section] . . . requirements that funds be deposited on the same day 'collected' shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, effective from and after July 1, 1984, provides as follows"

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Laws of 1985, ch. 538, § 3, effective from and after July 1, 1985, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under any section contained herein prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of any section contained herein are expressly continued in full force, effect and operation for the purpose of the assessment and collection of any taxes due or accrued thereunder prior to the date on which this act becomes effective, or the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Subsection (1) of this section, as amended by Laws of 1994, ch. 577, § 1, contained an incorrect reference to Section 25-15-107. The correct reference should be Section

27-15-107. At the direction of the State Attorney General's Office, this reference has been corrected.

Section 7-7-21 referred to in (4) was repealed by Laws of 1989, ch. 535, § 67, eff from and after July 1, 1989.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Tax on fire insurance, generally, see §§ 27-15-81 et seq.

Authorization for the board of supervisors of any county and the governing body of any municipality to contribute funds directly to any fire protection district or volunteer fire department serving the county or municipality to meet any standard established by the commissioner of insurance as provided in this section, see § 83-1-39.

§ 45-11-7. State fire academy; executive director; division of fire services development.

(1) There is hereby created a State Fire Academy for the training and education of persons engaged in municipal, county and industrial fire protection. The Commissioner of Insurance shall appoint an Executive Director of the State Fire Academy who, along with his employees, shall be designated as a division of the Insurance Department. The executive director shall serve at the pleasure of the Commissioner of Insurance. The State Fire Academy shall be under the supervision and direction of the Executive Director of the State Fire Academy. State Fire Academy training programs for fire personnel shall be conducted at the academy with seminars to be conducted in other sections of the state as and when the State Fire Academy Advisory Board considers it necessary and advisable.

The Commissioner of Insurance may establish and charge reasonable fees for the training programs and other services provided by the academy. A record of all funds received pursuant to this paragraph shall be maintained as is required for other monies pursuant to Section 45-11-5.

The Executive Director of the State Fire Academy is authorized and empowered to purchase, operate and maintain mobile fire fighting equipment as he may find necessary and proper for the operation of the academy subject to approval of the Commissioner of Insurance. The equipment may be utilized wherever training sessions may be held at the discretion of the State Fire Academy Advisory Board.

(2) The Commissioner of Insurance shall be authorized to undertake appropriate action to accomplish and fulfill the purposes of the State Fire Academy, including the hiring of instructors and personnel, the lease and purchase of appropriate training equipment and to lease, purchase or construct suitable premises and quarters for conducting annual school and seminars, as the State Fire Academy Advisory Board may deem necessary and required for such purposes. Any contract entered into under and by virtue of the provisions of this section shall first be submitted to and approved by the Public Procurement Review Board, and construction pursuant to the contract shall be under the supervision of the Governor's Office of General Services.

(3) Vouchers for operating expense for the State Fire Academy shall be signed by the Executive Director of the State Fire Academy and payment thereof shall be made from such funds to be derived from a special allocation from the State Fire Academy Fund as provided in Section 45-11-5.

(4) The State Fire Academy is hereby officially designated as the agency of this state to conduct training for fire personnel on a statewide basis in which members of all duly constituted fire departments may participate. This subsection shall not be construed to affect the authority of any fire department to conduct training for its own personnel.

(5) Each state agency, private agency or federal agency which provides training for the fire service shall coordinate such efforts with the State Fire Academy to prevent duplication of cost and to insure standardization of training.

(6) The State Fire Academy shall present an appropriate certificate signifying the successful completion of its prescribed courses.

(7) National fire fighter standards approved by the Mississippi Fire Personnel Minimum Standards and Certification Board shall be used as the basis for classroom instruction at the fire academy.

(8) The Commissioner of Insurance, Executive Director of the State Fire Academy, and the Mississippi Fire Personnel Minimum Standards and Certification Board shall coordinate all state programs related to fire department operations.

(9) The Commissioner of Insurance is hereby authorized and empowered to establish standard guidelines for the use of, and accountability for, municipal and county fire protection funds distributed pursuant to the provisions of Sections 83-1-37 and 83-1-39, Mississippi Code of 1972. Such guidelines shall include requirements for the establishment of record keeping and reports to the Commissioner of Insurance by municipalities and counties relating to the receipt and expenditure of fire protection funds, the training of fire department personnel and the submission to the Commissioner of Insurance of other data reasonably related to local fire protection responsibilities which the Commissioner of Insurance deems necessary for the performance of the duties of the State Fire Academy Advisory Board.

(10) In order that the Commissioner of Insurance may more effectively execute the duties imposed upon him by subsection (9) of this section, there is hereby created within the State Fire Academy a Division of Fire Services Development. The division shall be staffed by a Fire Services Development Coordinator, appointed by the executive director of the academy from his current staff and by such other personnel as deemed by the Commissioner of Insurance. The division shall work with municipal and county fire coordinators to ensure effective implementation of guidelines established pursuant to subsection (9) of this section and shall serve in an advisory capacity for all aspects of fire service improvement. The Fire Service Coordinator shall annually notify the Department of Finance and Administration of those municipalities and counties which are not eligible to receive a portion of fire protection fund distributions because of failure to comply with requirements

imposed in Sections 83-1-37 and 83-1-39 as a prerequisite to receipt of such funds.

(11) There is created in the State Treasury a separate account to be known as the "State Fire Academy Construction Fund." The State Treasurer shall transfer on July 1, 1997, the sum of Six Hundred Seventy-five Thousand Dollars ($675,000.00) and on July 1, 1998, the sum of Six Hundred Seventy-five Thousand Dollars ($675,000.00) from the State Fire Academy Fund 3502 into the separate account created in this subsection. Monies in such account shall be expended solely, upon legislative appropriations, to defray expenses related to the construction of capital improvements project known as "Fire Safety and Education Building" and parking areas at the State Fire Academy by the Bureau of Building, Grounds and Real Property Management of the Office of General Services and to pay any indebtedness incurred to accomplish such construction. Funds not used after the completion of this capital improvements project shall be transferred back into State Fund 3502.

SOURCES: Codes, 1942, § 5704.5; Laws, 1962, ch. 541, §§ 1-6; Laws, 1966, ch. 531, § 2; Laws, 1971, ch. 441, § 1; Laws, 1973, ch. 413, § 1; Laws, 1977, ch. 380; Laws, 1980, ch. 327; Laws, 1984, ch. 488, § 214; Laws, 1985, ch. 538, § 2; Laws, 1988, ch. 584, § 5; Laws, 1992, ch. 529, § 3; Laws, 1997, ch. 559, § 1, eff from and after July 1, 1997.

Editor's Note — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Laws of 1985, ch. 538, § 3, effective from and after July 1, 1985, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under any section contained herein prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of any section contained herein are expressly continued in full force, effect and operation for the purpose of the assessment and collection of any taxes due or accrued thereunder prior to the date on which this act becomes effective, or the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

Laws of 1989, ch. 460, §§ 1, 2, effective from and after July 1, 1989, provide as follows:

"SECTION 1. The State Fiscal Management Board is authorized and empowered to transfer to the State General Fund, out of the following enumerated special funds, amounts not to exceed in the aggregate the sums listed below for each special fund in such a manner throughout the 1990 fiscal year as deemed prudent by the board:

Agency/Fund	*Fund No.*	*Amount*
Unemployment Insurance Fund	*3644*	*$5,500,000*
Super Collider Funds	*3107*	*500*
	3108	*273,272*
Treasurer Due Shareholder	*3172*	*250,000*
Corrections Bond Fund Interest Income	*391A*	*6,103,191*
Local Disaster Emergency Grant	*3793*	*1,000,000*
Tax Commission-Telecommunication Fund	*3184*	*500,000*
Veteran's Home Construction Fund	*3915*	*402,852*
Construction and Renovation	*2916*	*56,000*
Fire Academy Construction Fund	*3990*	*509,000*

"SECTION 2. With respect to the amount to be transferred from the Treasurer Due Shareholder Fund under the provisions of Section 1, it is the intent of the Legislature that the transfer of these funds shall not excuse the state of any liability due any shareholder."

Cross References — Enactment of municipal fire regulations, see § 21-19-21.

Establishment and maintenance of municipal fire departments, see § 21-25-3.

Creation of municipal fire districts, see §§ 21-25-21 et seq.

State fiscal affairs, generally, see §§ 27-104-1 et seq.

Creation of the public procurement review board, see § 27-104-7.

Tax on gross insurance premium receipts to defray expenses of operating state fire academy, see § 45-11-5.

Duties of Academy with respect to uniform minimum training standards for firefighters, see § 45-11-201.

Mississippi Fire Personnel Minimum Standards and Certification Board, see § 45-11-251.

Authorization for the board of supervisors of any county and the governing body of any municipality to contribute funds directly to any fire protection district or volunteer fire department serving the county or municipality to meet any standards established by the commissioner of insurance as provided in this section, see § 83-1-39.

Requirement that counties designate a fire service coordinator responsible for seeing that standard guidelines established pursuant to this section are followed, and that the county adheres to those standards, in order to receive funds from the county volunteer fire department fund, see § 83-1-39.

ATTORNEY GENERAL OPINIONS

Under Section 45-11-7, a municipality may engage in training of its own firefighters but does not have authority to engage in training of firefighters of other municipalities; otherwise, a municipality would compete with the State Fire Academy, which has authority to provide uniform standards for statewide training of firefighters. Warren, March 15, 1996, A.G. Op. #96-0125.

The State Fire Academy has no authority to send its instructors out-of-state to deliver course instruction. Dale, June 4, 1999, A.G. Op. #99-0249.

A reasonable fee may be charged for the administration of a written and/or skills test on behalf of the Mississippi Fire Personnel Minimum Standards and Certification Board. Dale, Oct. 13, 2000, A.G. Op. #2000-0600.

§ 45-11-8. State Fire Academy Advisory Board.

There is hereby created the State Fire Academy Advisory Board for the purpose of reviewing matters affecting the State Fire Academy and advising the State Fire Academy on any such matters. The advisory board shall consist of the State Chief Deputy Fire Marshal, the Manager of the Mississippi State Rating Bureau, the President of the State Firefighter's Association, the President of the Mississippi Fire Chiefs Association, the President of the Mississippi Municipal Association and the President of the Mississippi Association of Supervisors or his designee. Members of the State Fire Academy Advisory Board who are not state employees shall be entitled to a per diem compensation as provided in Section 25-3-69, Mississippi Code of 1972, and to travel expenses as provided in Section 25-3-41, Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 584, § 6, eff from and after July 1, 1988.

Cross References — Authorization for the board of supervisors of any county and the governing body of any municipality to contribute funds directly to any fire protection district or volunteer fire department serving the county or municipality to meet any standards established by the commissioner of insurance as provided in this section, see § 83-1-39.

§ 45-11-9. Fire Safety Education Division created; Commissioner of Insurance to administer; development of fire safety education program; rules and regulations.

(1) There is created a Fire Safety Education Division within the State Fire Marshal's Office of the Department of Insurance. The Commissioner of Insurance, acting through the State Chief Deputy Fire Marshal, is charged with the administration of this section.

(2) The Fire Safety Education Division, in an effort to reduce loss of life and property from fires, shall develop and implement a fire safety education program using nationally recognized standards.

(3) The Commissioner of Insurance, acting through the State Chief Deputy Fire Marshal, is authorized to promulgate such rules and regulations as necessary to carry out the provisions of this section.

SOURCES: Laws, 2004, ch. 376, § 1, eff from and after July 1, 2004.

HOTELS, SCHOOLS AND OTHER PUBLIC BUILDINGS

Sec.
45-11-21. Duty of hotel and lodging house keepers to provide means of escape.
45-11-23. Duty of hotel and lodging house keeper to post notice.
45-11-25. Certain hotels and lodging houses to be provided with iron balconies and stairs.
45-11-27. Public halls, hotels shall provide stair rail.
45-11-29. Fire detectors required for hotels and lodging houses.
45-11-31. Repealed
45-11-33. Hotel and lodging house keepers to give alarm.
45-11-35. Construction requirements for hotels and lodging houses.
45-11-37. Doors to open outwardly.
45-11-39. Egress in case of fire.
45-11-41. School buildings to have certain fire escapes.
45-11-43. County superintendent to furnish plans and approve construction.
45-11-45. Places of public amusement; how constructed.
45-11-47. Public eating places or places of public amusement to provide exits; penalties for violation.
45-11-49. Penalties on hotel and lodging house keepers.
45-11-51. Penalty for giving public amusements in house not properly constructed.
45-11-53. Penalty for erection of building in disregard of requirements.
45-11-55. Every day's omission a separate offense.

§ 45-11-21. Duty of hotel and lodging house keepers to provide means of escape.

It is the duty of every keeper or proprietor of a hotel or lodging house of over two (2) stories in height to provide and securely fasten in every lodging room above the second story which has an outside window and is used for the accommodation of guests or employees, a rope or rope ladder, for the escape of the lodgers therein in case of fire, of at least one inch (1″) in diameter, which shall be fastened therein as near a window as practicable, and of sufficient length to reach therefrom to the ground on the outside of the hotel or lodging house, and made of strong material and as secure against becoming inflamed as practicable. Such rope or rope ladder shall be kept in good repair and condition. In lieu of a rope or rope ladder, there may be substituted any other appliance that may be deemed of equal or greater utility by the fire department or authority having control of the fire regulations of the city or town where such hotel or lodging house is located; but such appliance shall in all cases be so constructed as to be under the control and management of any lodger.

SOURCES: Codes, 1892, § 2080; 1906, § 2264; Hemingway's 1917, § 4631; 1930, § 4688; 1942, § 6999.

Cross References — Power of Legislature to enact laws for the safety of persons in public places, see Miss. Const. Art. 4, § 83.

Health regulations affecting innkeepers and hotel companies, generally, see §§ 41-49-1 et seq.

Requirement that notice of availability, location and directions for use of rope or rope ladder be posted in every room, see § 45-11-23.

Penalties for failure to provide rope or rope ladder or other like appliance for each room, see § 45-11-49.

Building requirements and the like under the Mississippi Fire Prevention Code, see §§ 45-11-101 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings §§ 28 et seq.

40A Am. Jur. 2d, Hotels, Motels, and Restaurants § 34.

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels, and Restaurants, Form 44 (complaint, petition, or declaration — injury to guest — lack of fire escape — guest forced to jump to safety).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places § 13.

§ 45-11-23. Duty of hotel and lodging house keeper to post notice.

Every proprietor or keeper of any hotel or lodging house of the kind mentioned in Section 45-11-21, shall post notices in every room of the hotel or lodging house required to be provided with a rope or rope ladder or other appliance, calling attention to the fact that said section has been complied with, and designating the part of such room where the rope, rope ladder, or appliance is fastened, with general directions for its use.

SOURCES: Codes, 1892, § 2081; 1906, § 2265; Hemingway's 1917, § 4632; 1930, § 4689; 1942, § 7000.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings § 18.

40A Am. Jur. 2d, Hotels, Motels, and Restaurants § 34.

CJS. 43A C.J.S., Inns, Hotels, and Eating Places § 13.

§ 45-11-25. Certain hotels and lodging houses to be provided with iron balconies and stairs.

Every hotel or lodging house over two (2) stories in height shall be provided with permanent iron balconies, with iron stairs leading from one balcony to the other, to be placed at the end of each hall in and above the second story in case the hotel or lodging house be over one hundred and fifty feet (150′) in length, and in other cases such number of balconies with stairs as may be directed by the fire department or authority having control of the fire regulations of the city or town where the hotel or lodging house is located. The balconies and iron stairs shall be constructed at the expense of the owner of the hotel or lodging house.

SOURCES: Codes, 1892, § 2082; 1906, § 2266; Hemingway's 1917, § 4633; 1930, § 4690; 1942, § 7001.

Cross References — Penalties for failure to provide iron balconies with iron stairs, see § 45-11-49.

JUDICIAL DECISIONS

1. In general.

Fire department, reducing number of fire escapes on hotel or lodging house, may not change character of fire escape required by statute. Jabour v. McKnight, 145 Miss. 835, 111 So. 370 (1927).

Lodging house owner held liable for injuries to lodger from failure to equip building with fire escapes. Jabour v. McKnight, 145 Miss. 835, 111 So. 370 (1927).

Lodger held not to have assumed risk of lodging house owner's failure to comply with law requiring fire escapes. Jabour v. McKnight, 145 Miss. 835, 111 So. 370 (1927).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings §§ 28-30.

40A Am. Jur. 2d, Hotels, Motels, and Restaurants § 34.

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels, and Restaurants, Form 44 (complaint, petition, or declaration — injury to guest — lack of fire escape — guest forced to jump to safety).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places § 13.

§ 45-11-27. Public halls, hotels shall provide stair rail.

Every public hall, opera house, hotel, lodging house, or other public building of two (2) or more stories, shall have provided to each stairway used by and for the public, a hand or side rail to protect persons in ascending or descending such stairway.

SOURCES: Codes, 1892, § 2083; 1906, § 2267; Hemingway's 1917, § 4634; 1930, § 4691; 1942, § 7002.

Cross References — Power of municipalities to regulate entrances to halls and churches, see § 21-19-29.

Penalties for failure to provide hand or side rail to each stairway, see § 45-11-49.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings § 38.

§ 45-11-29. Fire detectors required for hotels and lodging houses.

All hotels or lodging houses shall be provided with a Mississippi Fire Prevention Code-approved electric fire detector with a detector on each floor.

SOURCES: Codes, 1892, § 2084; 1906, § 2268; Hemingway's 1917, § 4635; 1930, § 4692; 1942, § 7003; Laws, 2004, ch. 379, § 1, eff from and after July 1, 2004.

Cross References — Penalties for failure to provide Mississippi Fire Prevention Code-approved electric fire detector, see § 45-11-49.

RESEARCH REFERENCES

ALR. Liability of one contracting for private police or security service for acts of personnel supplied. 38 A.L.R.3d 1332.

Am Jur. 13 Am. Jur. 2d, Buildings §§ 18, 25-27.

5 Am. Jur. Proof of Facts 3d 383, Negligent Failure to Install or Maintain Smoke Alarm or Sprinkler System.

§ 45-11-31. Repealed.

Repealed by Laws, 2004 ch. 379, § 3 eff July 1, 2004.

[Codes, 1892, § 2085; 1906, § 2269; Hemingway's 1917, § 4636; 1930, § 4693; 1942, § 7004.]

Editor's Note — Former § 45-11-31 required keepers of all hotels and public lodging houses to provide a large fire alarm bell or gong near the office.

§ 45-11-33. Hotel and lodging house keepers to give alarm.

Every proprietor or keeper of a hotel or lodging house shall, in case of fire therein, give notice of the same to all guests and inmates thereof at once, and do all in his power to rescue them.

SOURCES: Codes, 1892, § 2086; 1906, § 2270; Hemingway's 1917, § 4637; 1930, § 4694; 1942, § 7005.

Cross References — Penalties for failure to give alarm and do everything possible to rescue guests, see § 45-11-49.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hotels, Motels, and Restaurants § 34.

5 Am. Jur. Proof of Facts 3d 383, Negligent Failure to Install or Maintain Smoke Alarm or Sprinkler System.

CJS. 43A C.J.S., Inns, Hotels, and Eating Places § 13.

§ 45-11-35. Construction requirements for hotels and lodging houses.

All hotels or lodging houses hereafter constructed over two (2) stories in height and over one hundred feet (100′) in length or breadth, shall be so constructed as to have at least two (2) flights of stairs for use of guests leading from the ground floor to the uppermost story, one (1) to be located at each end or side.

SOURCES: Codes, 1892, § 2087; 1906, § 2271; Hemingway's 1917, § 4638; 1930, § 4695; 1942, § 7006.

Cross References — Building requirements and the like under the Mississippi Fire Prevention Code, see §§ 45-11-101 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings §§ 28-30.

§ 45-11-37. Doors to open outwardly.

All the doors for ingress and egress to public schoolhouses, theaters, assembly rooms, halls, courthouses, churches, factories with more than twenty (20) employees, and all other buildings and places of public resort whatever, where people are wont to assemble, excepting schoolhouses, courthouses, and churches of one (1) audience room, and that on the ground floor, shall be so swung as to open outwardly from the audience rooms, halls, or workshops; but such doors may be hung on double-jointed hinges, so as to open with equal ease outwardly or inwardly.

SOURCES: Codes, 1930, § 4696; 1942, § 7007; Laws, 1924, ch. 283.

Cross References — Power of municipalities to regulate entrances to halls and churches, see § 21-19-29.

§ 45-11-39. Egress in case of fire.

All school buildings, public or private, now under construction in this state or that may hereafter be constructed, shall be so constructed or so equipped as to afford ample and easy egress in case of fire.

SOURCES: Codes, 1930, § 4697; 1942, § 7008; Laws, 1924, ch. 290.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings §§ 28-30.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Form 182 (complaint, petition, or declaration — against school district or governing board — pupil's personal injury — defective fire escape).

15 Am. Jur. Proof of Facts, School Fires, § 13 (construction of school buildings); §§ 36-42 (exits-standards).

§ 45-11-41. School buildings to have certain fire escapes.

In the construction of school buildings all outside doors shall be made to open outwardly. All buildings of two (2) or more stories in height shall be constructed so as to give easy escape in case of fire, by providing modern fire escapes, or by providing iron ladders, slides or stairways on the outside of such buildings. In case of ladders, slides or stairways on the outside, sufficient platform room at the top of such ladder, slide or stairway and sufficient banisters or railings shall be provided to guarantee the safety of the children in getting out of the building. Provided, however, that in any fireproof school buildings with each floor on the ground level and constructed for more than ten (10) years, the board of trustees of the school or attendance center, in their discretion, may not be required to add fire escapes provided within sixty (60) days immediately following the passage of this section they spread upon their minutes a resolution to that effect.

SOURCES: Codes, 1930, § 4698; 1942, § 7009; Laws, 1924, ch. 290; Laws, 1964, ch. 417, eff from and after passage (approved June 11, 1964).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings §§ 28-30.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Form 182 (complaint, petition, or declaration — against school district or governing board — pupil's personal injury — defective fire escape).

15 Am. Jur. Proof of Facts, School Fires, § 13 (construction of school buildings); §§ 36-42 (exits — standards).

§ 45-11-43. County superintendent to furnish plans and approve construction.

The county superintendent of education in each county shall furnish plans and specifications for the fire escape facilities for each school building constructed, a copy of which shall be furnished the trustees of the district in which the new building is being constructed and a copy shall be placed on file in the office of the county superintendent of education. When the building is completed the trustees shall notify the county superintendent, who shall make a personal inspection of the new building and if the plans and specifications have been complied with he shall so report to the trustees and such notification and approval shall be made of record in his office. The school building shall not be opened for the reception of pupils until the county superintendent has approved the fire escape facilities.

SOURCES: Codes, 1930, § 4699; 1942, § 7010; Laws, 1924, ch. 290.

§ 45-11-45. Places of public amusement; how constructed.

Every place for public amusement shall have at least the following arrangements for the safety of those attending there: The seats shall be located in rows with spaces between the seats adequate for easy ingress and egress, and an aisle of at least four (4) feet in width shall run between the rows on the lowest floor, if there be more than one (1) floor, from the commencement of the seats toward the place of performance, exhibition, or speaking, as far as the seats are located, and, if there be only one (1) floor, then between the rows on that floor, and also an aisle of at least three (3) feet in width shall be made to run along the outward ends of the rows of seats and next to the walls, and also around or along the ends of all rows of seats wherever located; and all aisles shall be kept unobstructed towards places of egress. All seats shall be located in rows, to which the aisles shall conform. There shall be as many doors for egress for those in attendance, not less than two (2) at either end or side of the building, as can be made consistently with the proper strength of the structure. All scenery shall be made as secure against becoming inflamed as reasonably practicable, and all reasonably practicable arrangements shall be made for the supply of water or other means for extinguishment of fires, and they shall be kept constantly effective during the presence of the audience. In cities of over ten thousand (10,000) inhabitants a fireproof drop curtain of sufficient dimensions to cover the entire front of the stage shall be so hung that, upon an alarm of fire originating upon, or in rear of stage, it may be promptly dropped so as to prevent the fire from communicating with the auditorium.

SOURCES: Codes, 1892, § 2089; 1906, § 2273; Hemingway's 1917, § 4640; 1930, § 4700; 1942, § 7011.

Cross References — Proceedings in regard to inflammable condition existing in building, see § 45-11-3.

Building requirements and the like under the Mississippi Fire Prevention Code, see §§ 45-11-101 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings §§ 2 et seq.

23 Am. Jur. Proof of Facts 2d 461, Failure to Prevent Outbreak and Spread of Fire.

CJS. 30A C.J.S., Entertainment and Amusement; Sports §§ 22 et seq.

§ 45-11-47. Public eating places or places of public amusement to provide exits; penalties for violation.

(1) It shall be the duty of the owner and operator of any public restaurant, cafe, night club, or eating place or place of public amusement to provide proper exits for the use of patrons in the event of fire in same. Doors to all restaurants, cafes, night clubs, or other public eating places or places of public amusement shall open to the outside of the building, where the seating capacity is over fifty (50) seats. Every room, gallery, tier or other space having a capacity of one hundred (100) or more shall have not less than two (2) exit doorways. In every establishment that accommodates three hundred (300) or more persons, each room, gallery, tier or other space where such assembly occurs, shall have exit ways to the outside as follows:

Not less than two (2) exit ways when six hundred (600) persons or less are accommodated in such room, gallery, tier or other space; and

Not less than three (3) exit ways when more than six hundred (600), but not more than one thousand (1,000) persons, are accommodated; and

Not less than four (4) exit ways when more than one thousand (1,000) persons are accommodated.

(2) Any restaurant, cafe, night club or other public eating place or place of public amusement, consisting of two (2) or more stories or floors, or any restaurant, cafe, night club, or public eating place or place of public amusement, being situated above or higher than the ground floor of any building, when such upper or higher floor has a seating capacity for fifty (50) or more persons, shall provide at least two (2) stairways located as far apart as practical for the use of patrons in the event of fire in said building. At least one (1) of the two (2) stairways shall lead directly to the outside of such building or assembly room, and shall not lead into or through the lobby or any other place through which persons come from other parts of the building or will have to pass in making emergency exits.

(3) Any owner of any restaurant, cafe, night club, or public eating place failing or refusing to comply with the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction, be punished by imprisonment in the county jail not more than ninety (90) days, or by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 7011-01; Laws, 1946, ch. 347, §§ 1-3.

Cross References — Penalties for violating the Mississippi Fire Prevention Code, see § 45-11-111.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings §§ 28-30.

40A Am. Jur. 2d, Hotels, Motels, and Restaurants § 34.

CJS. 30A C.J.S., Entertainment and Amusement; Sports §§ 22 et seq.

§ 45-11-49. Penalties on hotel and lodging house keepers.

Every owner, lessee, keeper, or proprietor of a hotel or a lodging house who shall, when the same is prescribed by law to be done, fail, neglect or refuse:

(a) To provide for each room a rope or rope ladder, or other like appliance; or

(b) To give notice calling attention to such rope or rope ladder or appliance, and giving directions for its use; or

(c) To provide iron balconies with iron stairs; or

(d) To provide a hand or side rail to each stairway; or

(e) To provide a Mississippi Fire Prevention Code-approved electric fire detector; or

(f) To give alarm and awaken all guests and inmates of his house in case of fire therein or in close proximity thereto; or

(g) To do everything in case of fire in his power to rescue the guests or inmates of his house; or

(h) To do anything required by law to be done under the provisions of Sections 45-11-21 through 45-11-55;

shall be guilty of a misdemeanor, and, on conviction, shall be punished by imprisonment in the county jail not less than ninety (90) days nor more than six (6) months, or fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or both such fine and imprisonment.

SOURCES: Codes, 1892, § 2091; 1906, § 2275; Hemingway's 1917, § 4642; 1930, § 4701; 1942, § 7012; Laws, 2004, ch. 379, § 2, eff from and after July 1, 2004.

Cross References — Penalties for violating the Mississippi Fire Prevention Code, see § 45-11-111.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Liability of one contracting for private police or security service for acts of personnel supplied. 38 A.L.R.3d 1332.

Am Jur. 5 Am. Jur. Proof of Facts 3d 383, Negligent Failure to Install or Maintain Smoke Alarm or Sprinkler System.

§ 45-11-51. Penalty for giving public amusements in house not properly constructed.

Every person who shall give any public amusement, entertainment or exhibition in any house or place for public amusement not constructed and arranged as required by Sections 45-11-21 through 45-11-55, or shall violate or permit the violation of any of their requirements, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than Twenty Dollars ($20.00) nor more than Five Hundred Dollars ($500.00), or imprisoned in the county jail not less than one (1) week nor more than six (6) months, or both.

SOURCES: Codes, 1892, § 2092; 1906, § 2276; Hemingway's 1917, § 4643; 1930, § 4702; 1942, § 7013.

Cross References — Penalties for violating the Mississippi Fire Prevention Code, see § 45-11-111.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. Proof of Facts 2d 613, Dangerous or Defective Amusement Ride.

§ 45-11-53. Penalty for erection of building in disregard of requirements.

Any architect, carpenter, or builder, or the owner or other person, who may hereafter erect or cause to be erected, or aid in erecting, any hotel or other house or structure for the construction of which provisions are made in Sections 45-11-21 through 45-11-55, who shall refuse or fail to comply, in the erection or construction thereof, with such provisions, shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding Five Hundred Dollars ($500.00).

SOURCES: Codes, 1892, § 2093; 1906, § 2277; Hemingway's 1917, § 4644; 1930, § 4703; 1942, § 7014.

Cross References — Penalties for violating the Mississippi Fire Prevention Code, see § 45-11-111.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 45-11-55. Every day's omission a separate offense.

Every day's omission or failure by any person to do whatever under the provisions of Sections 45-11-21 through 45-11-55 is required to be done or provided, shall be considered and treated as a separate offense.

SOURCES: Codes, 1892, § 2094; 1906, § 2278; Hemingway's 1917, § 4645; 1930, § 4704; 1942, § 7015.

Cross References — Penalties for violating the Mississippi Fire Prevention Code, see § 45-11-111.

SALE OF BURGLAR BARS

SEC.
45-11-71. Sellers of burglar bars to public to comply with standard building code.
45-11-73. State fire marshal to promulgate rules and regulations; exceptions.
45-11-75. Penalty for violation.

§ 45-11-71. Sellers of burglar bars to public to comply with standard building code.

In the interest of public safety, any person who engages in the sale of burglar bars to the public shall comply with 1105.7 of the Standard Building Code of the Southern Building Code Congress International, as revised.

SOURCES: Laws, 1993, ch. 579, § 1, eff from and after July 1, 1993.

§ 45-11-73. State fire marshal to promulgate rules and regulations; exceptions.

The State Fire Marshal shall promulgate such rules and regulations as are necessary to carry out the provisions of Sections 45-11-71 through 45-11-75. These rules and regulations shall apply except in any county or municipality which has adopted the Standard Building Code of the Southern Building Code Congress International, with standards not less stringent than the Mississippi Fire Prevention Code.

SOURCES: Laws, 1993, ch. 579, § 2, eff from and after July 1, 1993.

Cross References — Adoption of building codes by counties, see § 19-5-9.
Adoption, amendment, and revision of building codes, see § 21-19-25.

§ 45-11-75. Penalty for violation.

Any person violating the provisions of Section 45-11-71, upon conviction, shall be fined in an amount not to exceed One Thousand Dollars ($1,000.00), and in the case of continuing violations without reasonable effort on the part of the defendant to correct such violations, each day of violation thereafter shall be a separate offense.

SOURCES: Laws, 1993, ch. 579, § 3, eff from and after July 1, 1993.

USE OF SAFETY GLAZING MATERIAL IN HAZARDOUS LOCATIONS

Sec.
45-11-81. Definitions.
45-11-83. Labeling required.
45-11-85. Offenses; construction of section.
45-11-87. Workmen not liable.
45-11-89. Penalties.

§ 45-11-81. Definitions.

The following terms shall have the meaning ascribed to them in this section unless the context clearly indicates otherwise:

(a) "Safety glazing material" shall mean any glazing material such as tempered glass, laminated glass, wire glass or rigid plastic, which meets the test requirements of ANSI standard Z-97.1-1972.

(b) "Hazardous locations" shall mean those installations, glazed or to be glazed, in commercial and public buildings, known as framed or unframed glass entrance doors, and those fixed glazed panels immediately adjacent to entrance or exit doors and which may be mistaken for doors, and those installations, glazed or to be glazed, in residential buildings and other structures used as dwellings, commercial buildings and public buildings, known as sliding glass doors, storm doors, shower doors and bathtub enclosures. Any entrance or exit door, or fixed glazed panel immediately adjacent to entrance or exit doors which may be mistaken for doors, which is fifty percent (50%) or more exposed glass without division frames, or contains a single glass panel with glass of more than sixty (60) inches in height or twenty-four (24) inches in width, will be a hazardous location.

SOURCES: Laws, 1974, ch. 571, § 1, eff from and after Jan 1, 1975.

§ 45-11-83. Labeling required.

(1) Each light of safety glazing material manufactured, distributed, imported or sold for use in hazardous locations or installed in such a location within the State of Mississippi shall be permanently labeled by such means as etching, sandblasting, firing of ceramic material on the safety glazing material, or by other suitable means. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of ANSI standard Z-97.1-1972. The label must be legible and visible after installation.

(2) Such safety glazing labeling shall not be used on other than safety glazing materials.

SOURCES: Laws, 1974, ch. 571, § 2, eff from and after January 1, 1975.

§ 45-11-85. Offenses; construction of section.

It shall be unlawful within the State of Mississippi to knowingly sell, fabricate, assemble, glaze, or install glazing materials other than safety glazing materials in, or for use in, any hazardous location, whether in a new installation or replacement in an existing location, as defined hereinabove after January 1, 1975. This section shall not be construed as being retroactive.

SOURCES: Laws, 1974, ch. 571, § 3, eff from and after Jan 1, 1975.

RESEARCH REFERENCES

ALR. Liability of owner or proprietor for injury or death caused by collision with glass door, panel, or wall. 41 A.L.R.3d 176.

§ 45-11-87. Workmen not liable.

No liability under Sections 45-11-81 through 45-11-89 shall be created as to workmen who are employees of a contractor, subcontractor, or other employer responsible for compliance with Sections 45-11-81 through 45-11-89.

SOURCES: Laws, 1974, ch. 571, § 4, eff from and after Jan 1, 1975.

§ 45-11-89. Penalties.

Whoever violates the provisions of Sections 45-11-81 through 45-11-89 shall be guilty of a misdemeanor and upon conviction thereof, shall be sentenced to pay a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or to imprisonment of not more than six (6) months, or both.

SOURCES: Laws, 1974, ch. 571, § 5, eff from and after January 1, 1975.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

MISSISSIPPI FIRE PREVENTION CODE

Sec.
45-11-101. Promulgation; buildings to which code applies; plans for construction of private correctional facilities housing state inmates to be submitted to State Fire Marshal's office to ensure compliance with Mississippi Fire Prevention Code; examination of local fire prevention codes.
45-11-103. Standards; deviation from standards; automatic sprinkler systems.
45-11-105. Enforcement of code by State Fire Marshal; Deputy Fire Marshals to have status of law enforcement officer; rules and regulations; cost of fire safety inspections; exceptions for state buildings.
45-11-107. Application of Sections 45-11-101 through 45-11-111.
45-11-109. Actions or proceedings to remedy prohibited acts.
45-11-111. Penalties.

§ 45-11-101. Promulgation; buildings to which code applies; plans for construction of private correctional facilities housing state inmates to be submitted to State Fire Marshal's office to ensure compliance with Mississippi Fire Prevention Code; examination of local fire prevention codes.

(1) The State Fire Marshal shall promulgate the Mississippi Fire Prevention Code which shall apply to:

(a) All buildings owned by the state or state agencies;

(b) All buildings utilized for public assembly, except in any county or municipality which has adopted a fire prevention code with standards not less stringent than the Mississippi Fire Prevention Code; however, the State Fire Marshal or his authorized representative shall perform investigations or inspections of such buildings only when advised by interested persons of a danger or hazardous inflammable condition existing in any building that would tend to impair the safety of persons or property, or when the State Fire Marshal or his authorized representative believes the investigation or inspection is in the interest of public safety. The investigation or inspection shall be made in accordance with Section 45-11-3;

(c) All buildings, the permits for the construction of which are issued subsequent to July 1, 1978, and which are not less than seventy-five (75) feet in height; provided, however, that in any county or municipality which has adopted a fire prevention code with standards not less stringent than the Mississippi Fire Prevention Code, the provisions and enforcement mechanism thereof shall apply and not the Mississippi Fire Prevention Code;

(d) All buildings, the permits for construction of which are issued subsequent to July 1, 2004, constructed as private correctional facilities that house state inmates. Before such construction, construction plans must be submitted for review and approval to the State Fire Marshal's Office to ensure compliance with the Mississippi Fire Prevention Code; however, in any county or municipality that has adopted a fire prevention code with standards not less stringent than the Mississippi Fire Prevention Code, the provisions and enforcement mechanism thereof shall apply instead of the Mississippi Fire Prevention Code. All private correctional facilities may be inspected as required by the State Fire Marshal or his duly authorized representative. Inspection fees and expenses authorized by Section 45-11-105(2) shall be assessed for each inspection conducted by the State Fire Marshal's Office and shall be paid to the State Fire Marshal's Office;

(e) Any buildings, the permits for construction of which are issued subsequent to July 1, 2004, upon the request of any interested person. The interested person may submit the construction plans to the State Fire Marshal's Office for review and approval before construction to ensure compliance with the Mississippi Fire Prevention Code; however, in any county or municipality that has adopted a fire prevention code with standards not less stringent than the Mississippi Fire Prevention Code, the provisions and enforcement mechanism thereof shall apply instead of the Mississippi Fire Prevention Code. Inspection fees and expenses authorized by Section 45-11-105(2) shall be assessed for each inspection conducted by the State Fire Marshal's Office and shall be paid to the State Fire Marshal's Office;

(f) All buildings, the permits for construction of which are issued subsequent to July 1, 2005, constructed as private fraternity and sorority houses located on state property. Before such construction, construction plans shall be submitted for review and approval to the State Fire Marshal's Office to ensure compliance with the Mississippi Fire Prevention Code. All private fraternity and sorority houses located on state property may be inspected as required by the State Fire Marshal or his duly authorized representative. All fraternity and sorority houses located on state property shall be equipped with an approved fire alarm and smoke detector system to be in compliance with the National Fire Code (NFPA) Standard 72 as published by the National Fire Protection Association and as same may be revised or amended. All fraternity and sorority houses constructed on state property after April 20, 2005, shall be equipped with an approved automatic fire sprinkler system to be in compliance with the National Fire Code (NFPA) Standard 13 as published by the National Fire Protection Association and as same may be revised or amended.

(2) The State Fire Marshal shall annually examine the fire prevention codes adopted by counties and municipalities within the State of Mississippi and prepare a list thereof specifying which codes have provisions not less stringent than those of the Mississippi Fire Prevention Code.

SOURCES: Laws, 1978, ch. 502, § 1; Laws, 1992, ch. 328, § 2; Laws, 2004, ch. 359, § 1; Laws, 2005, ch. 527, § 1, eff from and after passage (approved Apr. 20, 2005.)

Cross References — Interlocal cooperation of governmental units relating to fire protection and safety, see § 17-13-7.

Powers of municipalities in regard to fire prevention, see § 21-19-21.

State fire marshal generally, see §§ 45-11-1 et seq.

JUDICIAL DECISIONS

1. No liability.

Mother failed to prove that there was a material issue of fact concerning a city's and a gym's compliance with the Mississippi Fire Prevention Code under Miss. Code Ann. § 45-11-101 and that the city or gym was the proximate cause of a child's injury. Kaigler v. City of Bay St. Louis, 12 So. 3d 577 (Miss. Ct. App. 2009).

RESEARCH REFERENCES

ALR. Municipal liability for negligent fire inspection and subsequent enforcement. 69 A.L.R.4th 739.

Validity, construction, and application of the Uniform Fire Code. 46 A.L.R.5th 479.

Am Jur. 13 Am. Jur. 2d, Buildings §§ 18 et seq.

22 Am. Jur. Proof of Facts 2d 55, Negligent Fire Inspection by City or State Employee.

23 Am. Jur. Proof of Facts 2d 461, Failure to Prevent Outbreak and Spread of Fire.

§ 45-11-103. Standards; deviation from standards; automatic sprinkler systems.

The standards embodied in said code shall be based upon and shall be not less stringent than the standards established by the standard fire prevention code as promulgated by the Southern Building Code Congress International, Inc., and as the same may be revised or amended; however, the state fire marshal shall have the authority to deviate from the minimum requirements of such standard fire prevention code when the imposition and enforcement of a specific requirement of the standard fire prevention code would cause unnecessary hardship or when such deviation would enable builders to take advantage of new methods, materials or equipment which is of recognized adequacy.

The Mississippi Fire Prevention Code shall include provisions that every new building over seventy-five (75) feet in height in the State of Mississippi for which a permit is issued after July 1, 1978, shall be equipped throughout the building with a totally automatic sprinkler system designed for life safety and fire prevention and protection. This provision shall include every building over seventy-five (75) feet in height constructed after July 1, 1978, or to any existing building in which twenty-five percent (25%) or more of the floor space is being reconstructed or added thereto. However, public utility company buildings in which water would cause severe damage to equipment such as telephone equipment, computers or electric services, and silos, grain elevators and other structures utilized solely for the storage of agricultural products are exempt from the automatic sprinkler system provisions of the code.

SOURCES: Laws, 1978, ch. 502, § 2, eff from and after July 1, 1978.

Cross References — State fire marshal generally, see §§ 45-11-1 et seq.

Rules and regulations relating to hotels, schools and other public buildings generally, see §§ 45-11-21 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings §§ 25-27.

8A Am. Jur. Legal Forms 2d, Fires §§ 117:10 et seq (prevention and control of fires).

§ 45-11-105. Enforcement of code by State Fire Marshal; Deputy Fire Marshals to have status of law enforcement officer; rules and regulations; cost of fire safety inspections; exceptions for state buildings.

(1) The Mississippi Fire Prevention Code shall be enforced by the State Fire Marshal and such other persons as authorized thereby, including for this reason any county or municipal fire prevention personnel, pertaining to the prevention, inspection or investigation of fires. The State Chief Deputy Fire Marshal and deputy fire marshals shall have the status and powers of a law enforcement officer in performing their duties under the Mississippi Fire Prevention Code as authorized by standards set by Section 45-11-103, Mississippi Code of 1972. The State Chief Deputy Fire Marshal and deputy fire marshals serving under permanent appointment on January 1, 1992, shall not be required to meet any requirements of Section 45-6-11 of the Mississippi Code of 1972. The State Fire Marshal is authorized and empowered to promulgate rules and regulations for the enforcement of the Mississippi Fire Prevention Code.

(2) Applications for fire safety inspections shall be filed with the Office of the State Fire Marshal. An inspection fee of not less than One Hundred Dollars ($100.00) and reasonable and necessary travel expenses as provided under Section 25-3-41, Mississippi Code of 1972, shall be assessed for each inspection conducted by the Office of the State Fire Marshal and shall be paid to the Office of the State Fire Marshal.

(3) The inspection fee and expenses authorized under subsection (2) shall not be assessed for the inspection of buildings owned by the State of Mississippi or its political subdivisions or for inspections conducted by local fire departments or other local agencies with authority to conduct inspections or for the inspection of buildings used for religious assemblies.

SOURCES: Laws, 1978, ch. 502, § 3; Laws, 1992, ch. 328, § 3, eff from and after July 1, 1992.

Cross References — State fire marshal generally, see §§ 45-11-1 et seq.

RESEARCH REFERENCES

ALR. Municipal liability for negligent fire inspection and subsequent enforcement. 69 A.L.R.4th 739.

Am Jur. 13 Am. Jur. 2d, Buildings §§ 18 et seq.

23 Am. Jur. Proof of Facts 2d 461, Failure to Prevent Outbreak and Spread of Fire.

§ 45-11-107. Application of Sections 45-11-101 through 45-11-111.

Unless otherwise provided, Sections 45-11-101 through 45-11-111 shall apply to new or remodeled buildings, installations, equipment or conditions;

however, Sections 45-11-101 through 45-11-111 shall also apply to existing buildings, installations, equipment, conditions and occupancies where safety to life requires compliance with Sections 45-11-101 through 45-11-111, as determined by the state fire marshal.

SOURCES: Laws, 1978, ch. 502, § 4, eff from and after July 1, 1978.

Cross References — Rules and regulations relating to hotels, schools and other public building generally, see §§ 45-11-21 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings §§ 18 et seq.

§ 45-11-109. Actions or proceedings to remedy prohibited acts.

In case any building is constructed or reconstructed or any building is used in violation of the Mississippi Fire Prevention Code or of any ordinance or other regulation made under authority conferred hereby, the state fire marshal or the proper local authorities of any county or municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful construction or reconstruction, to restrain, correct or abate such violation or to prevent the occupancy of said building.

SOURCES: Laws, 1978, ch. 502, § 5, eff from and after July 1, 1978.

Cross References — State fire marshal generally, see §§ 45-11-1 et seq.

Rules and regulations relating to hotels, schools and other public buildings generally, see §§ 45-11-21 et seq.

RESEARCH REFERENCES

ALR. Municipal liability for negligent fire inspection and subsequent enforcement. 69 A.L.R.4th 739.

Am Jur. 23 Am. Jur. Proof of Facts 2d 461, Failure to Prevent Outbreak and Spread of Fire.

§ 45-11-111. Penalties.

Any person, firm or corporation who shall knowingly and willfully violate the terms or provisions of the Mississippi Fire Prevention Code shall be guilty of a misdemeanor and upon conviction therefor shall be sentenced to pay a fine of not to exceed One Thousand Dollars ($1,000.00), and in case of continuing violations without reasonable effort on the part of the defendant to correct same, each day the violation continues thereafter shall be a separate offense.

SOURCES: Laws, 1978, ch. 502, § 6; Laws, 1992, ch. 328, § 4, eff from and after July 1, 1992.

Cross References — Rules and regulations relating to hotels, schools and other public buildings generally, see §§ 45-11-21 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 23 Am. Jur. Proof of Facts 2d 461, Failure to Prevent Outbreak and Spread of Fire.

UNIFORM MINIMUM TRAINING STANDARDS FOR FIREFIGHTERS

SEC.
45-11-201. Legislative findings and intent; minimum standards for training.
45-11-203. Employment of persons not completing training standards prohibited; training standards.

§ 45-11-201. Legislative findings and intent; minimum standards for training.

The Legislature finds that the specialized and hazardous nature of fire fighting requires that fire fighters possess the requisite knowledge and demonstrate the ability to perform certain skills to carry out their responsibilities. The activities of fire fighters are important to the health, safety and welfare of the people of this state and are of such a nature to require education and training of a professional nature. It is the intent of the Legislature to require and provide minimum standards for training and to declare that the State Fire Academy is the principal facility for such purposes.

SOURCES: Laws, 1990, ch. 558, § 1, eff from and after Jan 1, 1991.

Cross References — State Fire Academy, see § 45-11-7.

ATTORNEY GENERAL OPINIONS

Mississippi Fire Personnel Minimum Standards Certification Board should look to Miss. Code Section 45-11-201 for guidance in determining what persons fall under definition of fire personnel. Warren, Apr. 30, 1993, A.G. Op. #93-0182.

§ 45-11-203. Employment of persons not completing training standards prohibited; training standards.

(1) After January 1, 1991, no person shall be employed as a full-time fire fighter by any local government fire fighting unit for a period exceeding one (1) year, nor for a cumulative time exceeding two thousand eight hundred (2,800) compensated hours, unless that person is certified as completing the mandatory training requirements in subsection (2). Any state agency or political subdivision that employs a person as a fire fighter who does not meet the requirements of subsection (2) of this section is prohibited from paying the

salary of such person, and any person violating this subsection shall be personally liable for making such payment. The Mississippi Fire Personnel Minimum Standards and Certification Board may grant an extension to individuals employed within the guidelines as established by the board not to exceed an additional year. Fire fighters serving as full-time employees prior to January 1, 1991, in a local fire fighting unit shall not be required to meet the minimum requirements in subsection (2).

(2) The uniform training standards for all paid fire fighters shall consist of satisfactory completion of a training program administered by the State Fire Academy or local governments that have the proper facilities and have been certified by the Mississippi Fire Personnel Minimum Standards and Certification Board which shall utilize National Fire Protection Association fire service professional qualification standards.

SOURCES: Laws, 1990, ch. 558, § 2; Laws, 1992, ch. 529, § 4; Laws, 1994, ch. 349, § 1, eff from and after July 1, 1994.

Cross References — Mississippi Fire Personnel Minimum Standards and Certification Board, see § 45-11-251.

ATTORNEY GENERAL OPINIONS

Pursuant to Miss. Code Section 45-11-203(2), Mississippi legislature intended for all firefighters to complete their training at State Fire Academy or at local governmental facilities that have been certified by Mississippi Fire Personnel Minimum Standards Certification Board; however, Miss. Code Section 45-11-203(2) does not preclude Board from exercising discretion to certify training programs located out of state, provided Board finds such programs are equal to or exceed training provided in Mississippi. Warren, Apr. 30, 1993, A.G. Op. #93-0182.

As to firefighter who is not certified by Mississippi Fire Personnel Minimum Standards and Certification Board, individual shall not be employed as full-time firefighter unless individual qualifies for exception under Miss. Code Section 45-11-203. Warren, Apr. 30, 1993, A.G. Op. #93-0182.

Under Section 45-11-203(2) any full time paid firefighter in the State would have to be certified by either being “grandfathered in”, attending the State Fire Academy, attending a Board approved training site or else present evidence of their qualifications through documentation/testing as may be required by the Board. Scott, July 19, 1996, A.G. Op. #96-0336.

Volunteer firemen compensated on a per call basis are not full-time fire fighters and are not required to meet the mandatory training requirements in Section 45-11-203. Tucker, June 26, 2006, A.G. Op. 06-0256.

When determining the terms of a lease where the school board retains an ownership interest, it is within the discretion of the board to require the lessee to maintain insurance. Donovan, Oct. 18, 2006, A.G. Op. 06-0478.

MISSISSIPPI FIRE PERSONNEL MINIMUM STANDARDS AND CERTIFICATION BOARD

SEC.
45-11-251. Board established; members; terms; qualifications; officers.
45-11-253. Functions, powers, and duties of Board.

§ 45-11-251. Board established; members; terms; qualifications; officers.

(1) There is hereby created the Mississippi Fire Personnel Minimum Standards and Certification Board. The board shall consist of eleven (11) members. The Commissioner of Insurance and the Director of the State Fire Academy shall serve as ex officio members. The Director of the State Fire Academy shall serve as secretary to the board. The Commissioner of Insurance may appoint a designee to serve in his absence.

(2) Nine (9) members of the Mississippi Fire Personnel Minimum Standards and Certification Board shall be selected as follows:

(a) Two (2) full-time paid firefighters below the rank of chief selected by the Mississippi Fire Fighters Association. The initial term shall be staggered with one (1) member serving a two-year term and one (1) member serving a three-year term. After the expiration of the initial term, the term shall be for three (3) years;

(b) One (1) full-time firefighter below the rank of fire chief selected by the Professional Fire Fighters Association of Mississippi;

(c) Three (3) career fire chiefs selected by the Mississippi Fire Chiefs Association. The initial term shall be staggered: one (1) member shall serve a term of one (1) year; one (1) member shall serve a term of two (2) years; and one (1) member shall serve a term of three (3) years. After the expiration of the initial term, the term shall be for three (3) years;

(d) One (1) full-time paid certified fire instructor selected by the Mississippi Fire Fighters Service Instructors Association. The initial term shall be for one (1) year. After the expiration of the initial term, the term shall be for three (3) years;

(e) One (1) full-time paid fire investigator from a paid department selected by the Mississippi Fire Investigators Association. The initial term shall be for two (2) years. After the expiration of the initial term, the term shall be for three (3) years; and

(f) One (1) member of the volunteer fire service selected by the Mississippi Fire Fighters Association. The initial term shall be for three (3) years. After the expiration of the initial term, the term shall be for three (3) years.

No member selected under this subsection shall serve more than two (2) terms consecutively. Any member missing three (3) consecutive meetings shall be deemed to have resigned from the board. A vacancy prior to the expiration of a term shall be filled by selection in the same manner and for the balance of the unexpired term.

(3) During his term, a member of the board shall not serve as a member of the State Fire Academy Advisory Board.

(4) The board shall select a chairman and vice chairman from its membership.

(5) The Department of Insurance shall provide administrative support for the board.

(6) Members of the Mississippi Fire Personnel Minimum Standards and Certification Board who are not state employees shall be entitled to a per diem

compensation as provided in Section 25-3-69, and to travel expenses as provided in Section 25-3-41. The provisions of this subsection shall apply to travel necessary to attend board meetings, as well as other travel authorized by the board and required in the performance of official duties.

SOURCES: Laws, 1992, ch. 529, § 1; Laws, 2004, ch. 533, § 1; Laws, 2005, ch. 312, § 1; Laws, 2014, ch. 381, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (6).

§ 45-11-253. Functions, powers, and duties of Board.

The board shall:

(a) Establish minimum educational and training standards for fire personnel.

(b) Certify persons as being qualified under Sections 45-11-251 and 45-11-253 to be fire personnel.

(c) Revoke certifications for cause and in the manner provided in Sections 45-11-251 and 45-11-253.

(d) Establish minimum curriculum requirements for basic and advanced courses and programs for schools operated by or for the state or any political subdivision thereof for the specific purpose of training fire personnel.

(e) Make recommendations concerning any matter within its purview.

(f) Make such inspection and evaluation as may be necessary to determine if governmental units are complying with Sections 45-11-251 and 45-11-253 at cost to those units.

(g) Approve fire training schools for operation by or for the state or any political subdivision thereof for the specific purpose of training personnel.

(h) Upon the request of agencies, conduct surveys or aid municipalities and counties to conduct surveys at cost to those agencies through qualified public or private agencies and assist in the implementation of any recommendations resulting from such surveys.

(i) Upon request of training agencies, conduct general and specific management surveys and studies of the operations of the requesting agencies at cost to those agencies. The role of the board under this subsection shall be that of consultant.

(j) Adopt and amend regulations consistent with law, for its internal management and control of board programs.

(k) Enter into contracts or do such things as may be necessary and incidental to the administration of Sections 45-11-251 and 45-11-253.

(*l*) Promulgate rules and regulations for the administration of Sections 45-11-251 and 45-11-253, including the authority to require the submission of reports and information by fire service agencies.

SOURCES: Laws, 1992, ch. 529, § 2, eff from and after July 1, 1992.

ATTORNEY GENERAL OPINIONS

Responsibility for considering and establishing minimum State Fire Academy entrance requirements rests with Mississippi Fire Personnel Minimum Standards and Certification Board pursuant to its enumerated powers, although Executive Director of State Fire Academy and State Fire Academy Advisory Board should have input. Warren, Oct. 21, 1992, A.G. Op. #92-0756.

Mississippi Fire Personnel Minimum Standards Certification Board can promulgate rules and regulations under Miss. Code Section 45-11-253(l), establishing what persons shall be included in definition of fire personnel as used in Miss. Code Section 45-11-253; in promulgating these rules and regulations, Board should look to Miss. Code Section 45-11-201 for guidance in determining what persons fall under definition of fire personnel. Warren, Apr. 30, 1993, A.G. Op. #93-0182.

Responsibility for considering and establishing minimum State Fire Academy entrance requirements, which would include physical fitness entrance requirements, rests with Mississippi Fire Personnel Minimum Standards and Certification Board pursuant to its powers under Miss. Code Section 45-11-253. Warren, Apr. 30, 1993, A.G. Op. #93-0182.

Legislature gave Mississippi Fire Personnel Minimum Standards and Certification Board numerous functions, powers and duties, including duty that Board shall establish minimum educational and training standards for all fire personnel pursuant to Miss. Code Section 45-11-253(a). Warren, Apr. 30, 1993, A.G. Op. #93-0182.

Under Miss. Code § 45-11-253, Mississippi legislature gave Mississippi Fire Personnel Minimum Standards and Certification Board power to make inspections and evaluations as may be necessary to determine if governmental units are complying therewith, at cost to those units pursuant to Miss. Code Section 45-11-253(f), to conduct surveys or aid municipalities and counties to conduct surveys at cost to those agencies through qualified public or private agencies and assist in implementation of any recommendations resulting from such surveys pursuant to Miss. Code Section 45-11-253(h), and, upon request of training agencies, to conduct general and specific management surveys and studies of operations of requesting agencies at cost to those agencies pursuant to Miss. Code Section 45-11-253(i). Warren, Apr. 30, 1993, A.G. Op. #93-0182.

Any monies collected as result of Miss. Code Section 45-11-253 shall be deposited into fund within State Treasury from which corresponding expenses were paid. Warren, Apr. 30, 1993, A.G. Op. #93-0182.

Any rule or regulation promulgated by Mississippi Fire Personnel Minimum Standards Certification Board must be consistent with their functions, powers and duties pursuant to Miss. Code Section 45-11-253, and must be in compliance with all constitutional requirements. Warren, Apr. 30, 1993, A.G. Op. #93-0182.

Section 45-11-253 gives the Board the authority to approve training sites and the certification of individuals who have received the training. In the absence of any statutory prohibition, retroactive approval may be granted by the Board in its discretion. Scott, July 19, 1996, A.G. Op. #96-0336.

The Mississippi Fire Personnel Minimum Standards and Certification Board has the authority to establish minimum educational and training standards for fire personnel to include the requirement of successfully completing an additional written and/or skills test and evaluation prior to receiving certification from the board. Dale, Oct. 13, 2000, A.G. Op. #2000-0600.

The Mississippi Fire Personnel Minimum Standards and Certification Board has the authority to contract with the State Fire Academy to administer a written and/or skills test for the board. Dale, Oct. 13, 2000, A.G. Op. #2000-0600.

BURN INJURY NOTIFICATION

SEC.
45-11-281. Notification by hospital and certain licensed facilities; burn injury defined; notice contents; reporting requirement if investigation conducted after notification; report of burn injury-related death; confidentiality.

§ 45-11-281. Notification by hospital and certain licensed facilities; burn injury defined; notice contents; reporting requirement if investigation conducted after notification; report of burn injury-related death; confidentiality.

(1) Any hospital, as defined in Section 41-9-3, or any licensed facility, as defined in Section 41-23-39, that is initially responsible for the treatment of an individual for a burn injury, shall notify the State Fire Marshal or his designee within twenty-four (24) hours by phone or facsimile.

(2)(a) For the purposes of this section, the term "burn injury" means a burn injury:

(i) Which causes second- or third-degree burns to nine percent (9%) or more of the patient's body;

(ii) Which causes injury to the upper respiratory tract or laryngeal edema caused by inhaling super-heated air; or

(iii) Which causes death.

(b) The term "burn injury" shall not include sunburns.

(3) Notice under this section shall include:

(a) The name and address of the patient;

(b) A description of the burn injury;

(c) The reported cause of the burn injury;

(d) The patient's disposition; and

(e) Any other fact concerning the burn injury which might assist in detecting arson.

(4) If an investigation is conducted after notification is given under this section, the investigating agency shall report its findings on an incident reporting system report and send it to the State Fire Marshal for retention.

(5) The Department of Health shall report to the State Fire Marshal any burn injury-related death.

(6) Any information obtained by or disclosed to the State Fire Marshal pursuant to this section shall be held by the State Fire Marshal as confidential and shall not be disclosed without written consent from the burn victim, or in the case of death, or in the case of a minor, without the written consent of his or her parent or legal representative or by court order. Nothing in this subsection shall prohibit the State Fire Marshal from publishing aggregate statistical data from such information without releasing any personally identifiable data.

(7) The State Fire Marshal is authorized to promulgate rules and regulations necessary for the implementation of this section.

SOURCES: Laws, 2009, ch. 519, § 1, eff from and after July 1, 2009.

TRUSS CONSTRUCTION EMBLEMS

SEC.
45-11-301. Owners of certain buildings required to attach truss construction emblem to building; emblem requirements; exemptions; contractor performing work on certain buildings to be responsible for proper attachment of emblem.

§ 45-11-301. Owners of certain buildings required to attach truss construction emblem to building; emblem requirements; exemptions; contractor performing work on certain buildings to be responsible for proper attachment of emblem.

(1) The owner of any building located in the State of Mississippi with a floor or ceiling constructed with truss construction must attach to the building an emblem that identifies the building as having truss construction. The emblem shall:

(a) Be permanently affixed to the left of the main entrance door at a height between four (4) feet and six (6) feet above the ground;

(b) Be of a bright and reflective color or made of a reflective material;

(c) Be in the shape of an isosceles triangle measuring six (6) inches horizontally and three (3) inches vertically;

(d) Have conspicuously printed on it the following letters, as appropriate, based on the type of truss construction used in the building being identified by the emblem:

(i) "F" to signify a floor with truss construction;

(ii) "R" to signify a roof with truss construction; or

(iii) "F/R" to signify both a floor and roof with truss construction.

(2)(a) This section shall not apply to any building with truss construction that is a detached one- or two-family residential structure.

(b) This section shall not apply to any building constructed before July 1, 2010, unless such building undergoes expansion or remodeling on or after that date.

(3) For purposes of this section, the term "truss" shall mean structural members, such as boards, timbers, beams or steel bars, joined together in a rigid framework.

(4) The contractor who performs the construction, expansion or remodeling of any building on or after July 1, 2010, shall be responsible for the proper attachment of the truss construction emblem to the building.

(5) The State Fire Marshal may promulgate rules and regulations necessary for the implementation of this section.

SOURCES: Laws, 2009, ch. 522, § 1; Laws, 2010, ch. 426, § 1, eff from and after July 1, 2010.

CHAPTER 12

Mississippi Fire Safety Standard and Firefighter Protection Act [For contingent repeal of this chapter, see § 45-12-21]

Sec.
45-12-1. Short title [For contingent repeal of this section, see § 45-12-21].
45-12-3. Definitions [For contingent repeal of this section, see § 45-12-21].
45-12-5. Test method and performance standard [For contingent repeal of this section, see § 45-12-21].
45-12-7. Certification and product change [For contingent repeal of this section, see § 45-12-21].
45-12-9. Marking of cigarette packaging [For contingent repeal of this section, see § 45-12-21].
45-12-11. Penalties [For contingent repeal of this section, see § 45-12-21].
45-12-13. Implementation [For effective date, see Editor's note; for contingent repeal of this section, see § 45-12-21].
45-12-15. Inspection [For contingent repeal of this section, see § 45-12-21].
45-12-17. Cigarette Fire Safety Standard and Firefighter Protection Fund [For contingent repeal of this section, see § 45-12-21].
45-12-19. Sale outside of Mississippi [For contingent repeal of this section, see § 45-12-21].
45-12-21. Preemption.
45-12-23. Local regulation [For contingent repeal of this section, see § 45-12-21].

§ 45-12-1. Short title [For contingent repeal of this section, see § 45-12-21].

This chapter shall be known and may be cited as the "Mississippi Fire Safety Standard and Firefighter Protection Act."

SOURCES: Laws, 2009, ch. 473, § 1, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 473, § 13, provides:

"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

§ 45-12-3. Definitions [For contingent repeal of this section, see § 45-12-21].

As used in this chapter, unless the context otherwise requires:

(a) "Agent" means any person authorized by the commissioner to purchase and affix stamps on packages of cigarettes.

(b) "Commissioner" means the Chairman of the State Tax Commission of the State of Mississippi, and his authorized agents and employees.

(c) "State Fire Marshal" means the Commissioner of Insurance and State Fire Marshal of the State of Mississippi, and his authorized agents and employees.

(d) "Cigarette" means:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(ii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as described in subparagraph (i) above.

(e) "Manufacturer" means:

(i) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer; or

(ii) Any entity that becomes a successor of an entity described in subparagraph (i) of this paragraph.

(f) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in subsection (1)(f) of Section 45-12-5 for all test trials used to certify cigarettes in accordance with this chapter.

(g) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time.

(h) "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(i) "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts, and the exchanging of cigarettes for any consideration other than money, are considered sales.

(j) "Sell" means to sell, or to offer or agree to do the same.

(k) "Wholesale dealer" means any person, other than a manufacturer, who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

SOURCES: Laws, 2009, ch. 473, § 2, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 473, § 13, provides:

"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

Section 27-3-4 provides that the term "chairman of the State Tax Commission" shall mean the Commissioner of Revenue of the Department of Revenue.

§ 45-12-5. Test method and performance standard [For contingent repeal of this section, see § 45-12-21].

(1) Except as provided in subsection (7) of this section, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with Section 45-12-7, and the cigarettes have been marked in accordance with Section 45-12-9.

(a) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) Standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

(b) Testing shall be conducted on ten (10) layers of filter paper.

(c) No more than twenty-five percent (25%) of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty (40) replicate tests shall comprise a complete test trial for each cigarette tested.

(d) The performance standard required by this section shall only be applied to a complete test trial.

(e) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to Standard ISO/IEC 17025 of the International Organization for Standardization (ISO), or other comparable accreditation standard required by the State Fire Marshal.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than nineteen percent (19%).

(g) This section does not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

(h) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.

(2) Each cigarette listed in a certification submitted pursuant to Section 45-12-7 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column. At least one (1) complete band shall be located at least fifteen (15) millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two (2) bands fully located at least fifteen (15) millimeters from the lighting end and ten (10) millimeters from the filter end of the tobacco column, or ten (10) millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(3) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test method prescribed in paragraph (a) of subsection (1) shall propose a test method and performance standard for

the cigarette to the State Fire Marshal. Upon approval of the proposed test method and a determination by the State Fire Marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in paragraph (c) of subsection (1), the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to Section 45-12-7. If the State Fire Marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this section, and the State Fire Marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the State Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under this section. All other applicable requirements of this section shall apply to the manufacturer.

(4) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three (3) years, and shall make copies of these reports available to the State Fire Marshal and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within sixty (60) days of receiving a written request shall be subject to a civil penalty not to exceed Ten Thousand Dollars ($10,000.00) for each day after the sixtieth day that the manufacturer does not make such copies available.

(5) The State Fire Marshal may promulgate a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in paragraph (c) of subsection (1).

(6) The State Fire Marshal shall review the effectiveness of this section and report every three (3) years to the Legislature his findings and, if appropriate, recommendations for legislation to improve the effectiveness of this chapter. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

(7) The requirements of subsection (1) shall not prohibit:

(a) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after July 1, 2010, if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to July 1, 2010, and the wholesale or retail dealer can establish that the inventory was purchased prior to July 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year; or

(b) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer), for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

(8) This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform this chapter with the laws of those states that have enacted reduced cigarette ignition propensity laws as of July 1, 2010.

SOURCES: Laws, 2009, ch. 473, § 3, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 473, § 13, provides:

"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

Cross References — Retesting of altered cigarettes required under certain circumstances, see § 45-12-7.

Comparable Laws from other States — Arizona Revised Statutes, §§ 41-2170 et seq.

Idaho Code Statutes Annotated, §§ 39-8901 et seq.
Kentucky Revised Statutes Annotated, §§ 227.770 et seq.
Louisiana Annotated Statutes, §§ 40:1626 et seq.
Maryland Business Regulation Code Annotated, § 16-601 et seq.
Minnesota Annotated Statutes, §§ 299F.01 et seq.
Rhode Island General Laws, §§ 23-20.11-1 et seq.
South Carolina Code of Laws Annotated, §§ 23-51-10 et seq.
Tennessee Code Annotated, §§ 68-102-501 et seq.
Texas Health and Safety Code, §§ 796.001 et seq.
Utah Code Annotated, §§ 53-7-401 et seq.
Virginia Code Annotated, §§ 9.1-209 et seq.

§ 45-12-7. Certification and product change [For contingent repeal of this section, see § 45-12-21].

(1) Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

(a) Each cigarette listed in the certification has been tested in accordance with Section 45-12-5; and

(b) Each cigarette listed in the certification meets the performance standard set forth in Section 45-12-5.

(2) Each cigarette listed in the certification shall be described with the following information:

(a) Brand, or trade name on the package;
(b) Style, such as light or ultra light;
(c) Length in millimeters;
(d) Circumference in millimeters;
(e) Flavor, such as menthol or chocolate, if applicable;
(f) Filter or nonfilter;
(g) Package description, such as soft pack or box;
(h) Marking pursuant to Section 45-12-9;

(i) The name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and

(j) The date that the testing occurred.

(3) The State Fire Marshal shall make certifications available to the Attorney General for purposes consistent with this chapter and the commissioner for the purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section shall be recertified every three (3) years.

(5) For each brand family of cigarettes listed for certification, a manufacturer shall pay a fee of One Thousand Dollars ($1,000.00) to the State Fire Marshal. The fee paid shall apply to all cigarettes within the brand family certified and shall include any new cigarette certified within the brand family during the three-year certification period.

(6) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this section, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in Section 45-12-5 and maintains records of that retesting as required by Section 45-12-5. Any altered cigarette which does not meet the performance standard set forth in Section 45-12-5 may not be sold in this state.

SOURCES: Laws, 2009, ch. 473, § 4, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 473, § 13, provides:

"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

§ 45-12-9. Marking of cigarette packaging [For contingent repeal of this section, see § 45-12-21].

(1) Cigarettes that are certified by a manufacturer in accordance with Section 45-12-7 shall be marked to indicate compliance with the requirements of Section 45-12-5. The marking shall be in eight-point type or larger and consist of the letters "FSC," which signifies Fire Standard Compliant, permanently printed, stamped, engraved or embossed on the package at or near the UPC Code.

(2) A manufacturer shall use only one (1) marking, and shall apply this marking uniformly for all packages, including, but not limited to, packs, cartons, and cases, and brands marketed by that manufacturer.

(3) Manufacturers certifying cigarettes in accordance with Section 45-12-7 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes. Wholesale dealers, agents and retail dealers shall permit the State Fire Marshal, the commissioner, the Attorney General and their employees to inspect markings of cigarette packaging marked in accordance with this section.

SOURCES: Laws, 2009, ch. 473, § 5, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 473, § 13, provides:
"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

§ 45-12-11. Penalties [For contingent repeal of this section, see § 45-12-21].

(1) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Section 45-12-5, shall be subject to a civil penalty not to exceed One Hundred Dollars ($100.00) for each pack of such cigarettes sold or offered for sale, provided that in no case shall the penalty against any such person or entity exceed One Hundred Thousand Dollars ($100,000.00) during any thirty-day period.

(2) A retail dealer who knowingly sells or offers to sell cigarettes in violation of Section 45-12-5 shall be subject to a civil penalty not to exceed One Hundred Dollars ($100.00) for each pack of such cigarettes sold or offered for sale, provided that in no case shall the penalty against any retail dealer exceed Twenty-five Thousand Dollars ($25,000.00) for sales or offers to sale during any thirty-day period.

(3) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 45-12-7 shall be subject to a civil penalty of at least Seventy-five Thousand Dollars ($75,000.00) and not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) for each such false certification.

(4) Any person violating any other provision in this section shall be liable for a civil penalty for a first offense not to exceed One Thousand Dollars ($1,000.00), and for a subsequent offense shall be liable for a civil penalty not to exceed Five Thousand Dollars ($5,000.00), for each such violation.

(5) Whenever any law enforcement personnel or duly authorized representative of the State Fire Marshal shall discover any cigarettes (a) for which no certification has been filed as required by Section 45-12-7, or (b) that have not been marked as required by Section 45-12-9, such personnel is hereby authorized and empowered to seize and take possession of such cigarettes. Cigarettes seized pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(6) In addition to any other remedy provided by law, the Attorney General may file an action in the circuit court of the county in which such alleged violation of this chapter occurred, including petitioning (a) for preliminary or permanent injunctive relief against any manufacturer, importer, wholesale

dealer, retail dealer, agent or any other person or entity to enjoin such entity from selling, offering to sell, or affixing tax stamps to any cigarette that does not comply with the requirements of this chapter, or (b) to recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this chapter or of rules or regulations adopted under this chapter constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief. Upon obtaining judgment for injunctive relief under this section, the State Fire Marshal or Attorney General shall provide a copy of the judgment to all wholesale dealers and agents to which the cigarette has been sold.

SOURCES: Laws, 2009, ch. 473, § 6, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 473, § 13, provides:

"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

§ 45-12-13. Implementation [For effective date, see Editor's note; for contingent repeal of this section, see § 45-12-21].

(1) The State Fire Marshal may promulgate rules and regulations, pursuant to Section 25-43-1 et seq., necessary to effectuate the purposes of this chapter.

(2) The commissioner in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, as authorized under Section 27-69-1 et seq., may inspect such cigarettes to determine if the cigarettes are marked as required by Section 45-12-9. If the cigarettes are not marked as required, the commissioner shall notify the State Fire Marshal.

SOURCES: Laws, 2009, ch. 473, § 7, eff from and after July 1, 2010. See Editor's note.

Editor's Note — Laws of 2009, ch. 473, § 13, provides:

"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13(1)] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

Section 25-43-1.101(3) provides that any reference to the Mississippi Administrative Procedures Act or Section 25-43-1 et seq. shall be deemed to mean and refer to the Mississippi Administrative Procedures Law, codified as Section 25-43-1.101 et seq.

§ 45-12-15. Inspection [For contingent repeal of this section, see § 45-12-21].

To enforce the provisions of this chapter, the Attorney General, the commissioner and the State Fire Marshal, their duly authorized representatives and other law enforcement personnel, are hereby authorized to examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control or occupancy of any premises where cigarettes are placed, sold or offered for sale, is hereby directed and required to give the Attorney General, the commissioner and the State Fire Marshal, their duly authorized representatives and other law enforcement personnel, the means, facilities and opportunity for the examinations authorized by this section.

SOURCES: Laws, 2009, ch. 473, § 8, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 473, § 13, provides:
"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

§ 45-12-17. Cigarette Fire Safety Standard and Firefighter Protection Fund [For contingent repeal of this section, see § 45-12-21].

There is hereby established in the State Treasury a special fund to be known as the "Cigarette Fire Safety Standard and Firefighter Protection Fund." The fund shall consist of all certification fees paid under Section 45-12-7 and all monies recovered as penalties under Section 45-12-11. The monies shall be deposited to the credit of the fund and shall, in addition to any other monies made available for such purpose, be used by the State Fire Marshal to defray costs incurred by the State Fire Marshal in fulfilling his duties under this chapter, and to support fire safety and prevention programs.

SOURCES: Laws, 2009, ch. 473, § 9, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 473, § 13, provides:
"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

§ 45-12-19. Sale outside of Mississippi [For contingent repeal of this section, see § 45-12-21].

Nothing in this section shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 45-12-5 if the cigarettes are, or will be, stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state.

SOURCES: Laws, 2009, ch. 473, § 10, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 473, § 13, provides:
"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

§ 45-12-21. Preemption.

This chapter shall be repealed if a federal reduced cigarette ignition propensity standard is adopted and becomes effective.

SOURCES: Laws, 2009, ch. 473, § 11, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 472, § 13, provides:
"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

§ 45-12-23. Local regulation [For contingent repeal of this section, see § 45-12-21].

This chapter preempts any local law, ordinance or regulation that conflicts with any provision of this chapter or any policy of the state implemented in accordance with this chapter and, notwithstanding any other provision of law, a governmental unit of this state may not enact or enforce an ordinance, local law or regulation conflicting with or preempted by this chapter.

SOURCES: Laws, 2009, ch. 473, § 12, eff from and after passage (approved Mar. 30, 2009.)

Editor's Note — Laws of 2009, ch. 473, § 13, provides:
"SECTION 13. This act shall take effect and be in force from and after July 1, 2010; however, subsection (1) of Section 7 of this act [§ 45-12-13] and Section 12 of this act [§ 45-12-23] shall take effect and be in force from and after the passage of this act [March 30, 2009]."

CHAPTER 13

Fireworks and Explosives

Article 1. Fireworks 45-13-1
Article 3. Explosives 45-13-101

Article 1.

Fireworks.

Sec.
45-13-1. Manufacture, sale, possession, etc., of dangerous items prohibited; common fireworks; paper caps.
45-13-3. Sale, display, possession regulated; labeling.
45-13-5. Additional items excepted from article.
45-13-7. Storage; signs; fire extinguishing equipment; original packages.
45-13-9. Dates when sales prohibited; sales to children; unlawful to explode or ignite in certain places.
45-13-11. Permits for exhibitions; storage of items held for exhibitions.
45-13-13. Rights of municipal governing bodies and county boards of supervisors unaffected by this article.
45-13-15. Violations.

§ 45-13-1. Manufacture, sale, possession, etc., of dangerous items prohibited; common fireworks; paper caps.

Except as herein provided, the manufacture, sale, possession or use of fireworks in this state is prohibited, provided the manufacture, sale, possession and use of fireworks which are now or may hereafter be classified as "common fireworks" by the Interstate Commerce Commission, and are labeled by said commission with the Class C common fireworks label, and which were designed to produce an audible effect shall contain an explosive composition not exceeding two (2) grains in weight, such fireworks being referred to as safe and sane items, and including such items as cone fountains, small Chinese crackers, small non-explosive Roman candles and rockets, and similar nondangerous items, shall be permitted within this state, but only upon the conditions as hereinafter set forth in this article. Paper caps for use in toy guns and similar items and nonexplosive sparklers are not included within the term "fireworks" as herein used.

SOURCES: Codes, 1942, § 7015-01; Laws, 1960, ch. 249, § 1, eff from and after June 30, 1960.

Cross References — Power of municipalities to regulate the use and sale of fireworks, see § 21-19-15.

Power of municipalities to regulate circuses, shows, theaters, and amusements, generally, see § 21-19-33.

Regulation of places where fireworks may be exploded, see § 97-37-27.

RESEARCH REFERENCES

ALR. Liability for injury by explosive or the like found by, or left accessible to a child. 10 A.L.R.2d 22.

Liability of seller of firearms, explosive, or highly inflammable substance to child. 20 A.L.R.2d 119.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

Am Jur. 31A Am. Jur. 2d, Explosions and Explosives §§ 7, 10, 11, 225.

CJS. 35 C.J.S., Explosives §§ 7-11.

§ 45-13-3. Sale, display, possession regulated; labeling.

Except as hereinafter provided, no retailer, dealer or any other person shall sell, offer for sale, store, display, or have in their possession, or use or explode anywhere in this state any fireworks that have not been approved and labeled as Class C common fireworks by the Interstate Commerce Commission. No jobber, wholesaler, manufacturer or any other person shall sell to retail dealers or any other person in this state for the purpose of resale or use in this state any fireworks which do not have the Interstate Commerce Commission Class C label printed on the fireworks or on the smallest package in which the same are sold. The Interstate Commerce Commission Class C label must be visible on the fireworks or smallest container in which the same are sold and the label shall be on the fireworks or on the package or both which are received by the general public from the dealer, and such label shall be of such size and so positioned as to be readily seen and recognized by law enforcement officers and the public. Wherever practical such fireworks and container shall have imprinted thereon directions for the handling thereof.

SOURCES: Codes, 1942, § 7015-02; Laws, 1960, ch. 249, § 2, eff from and after June 30, 1960.

Cross References — Power of municipalities to regulate the use and sale of fireworks, see § 21-19-15.

Power of municipalities to regulate circuses, shows, theaters, and amusements, generally, see § 21-19-33.

Regulation of places where fireworks may be exploded, see § 97-37-27.

RESEARCH REFERENCES

ALR. Liability for injury by explosive or the like found by, or left accessible to child. 10 A.L.R.2d 22.

Liability of seller of firearm, explosive, or highly inflammable substance to child. 20 A.L.R.2d 119.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

Am Jur. 31A Am. Jur. 2d, Explosions and Explosives §§ 12, 13.

CJS. 35 C.J.S., Explosives §§ 7-11.

§ 45-13-5. Additional items excepted from article.

Nothing in this article shall apply to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, or to the military or naval forces of the United States or of this state, or to peace officers or to the use of blank cartridge for ceremonial, theatrical or athletic events.

SOURCES: Codes, 1942, § 7015-03; Laws, 1960, ch. 249, § 3; Laws, 1966, ch. 376, § 1, eff from and after January 1, 1967.

§ 45-13-7. Storage; signs; fire extinguishing equipment; original packages.

Fireworks kept for sale at wholesale shall be stored in a room set aside for the storage of fireworks only. Over the entrance to this room shall be posted a sign reading "FIREWORKS—NO SMOKING—KEEP OPEN FLAMES AWAY." Two (2) approved fire extinguishers shall be provided and kept in close proximity to the stock of fireworks in all buildings where fireworks are sold. Small temporary stands used for storing and selling fireworks only, in lieu of the fire extinguishers, may have a barrel of water and two (2) buckets available for use as fire extinguishing equipment. All fireworks kept for sale on counters must remain in original packages unless an attendant is on duty at all times at the counter where the fireworks are on display. Signs reading "FIREWORKS FOR SALE—NO SMOKING ALLOWED" shall be displayed in the section of any store set aside for the sale of fireworks.

SOURCES: Codes, 1942, § 7015-04; Laws, 1960, ch. 249, § 4, eff from and after June 30, 1960.

Cross References — Power of municipalities to regulate the use and sale of fireworks, see § 21-19-15.

Power of municipalities to regulate circuses, shows, theaters, and amusements, generally, see § 21-19-33.

Regulation of places where fireworks may be exploded, see § 97-37-27.

RESEARCH REFERENCES

ALR. Liability for injury by explosive or the like found by, or left accessible to a child. 10 A.L.R.2d 22.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

Am Jur. 31A Am. Jur. 2d, Explosions and Explosives §§ 12, 13.

CJS. 35 C.J.S., Explosives §§ 7-11.

§ 45-13-9. Dates when sales prohibited; sales to children; unlawful to explode or ignite in certain places.

No fireworks shall be sold or offered for sale at retail before the fifteenth day of June and after the fifth day of July and before the fifth day of December and after the second day of January of each year. No fireworks shall be sold to any person under the age of twelve (12) years. It shall be unlawful to ignite or discharge fireworks of any type within six hundred (600) feet of any church, hospital or school, or within seventy-five (75) feet of where fireworks are stored or offered for sale. It shall also be unlawful to ignite or discharge the same within or throw the same from or into or at any motor vehicle.

SOURCES: Codes, 1942, § 7015-05; Laws, 1960, ch. 249, § 5, eff from and after June 30, 1960.

Cross References — Power of municipalities to regulate the use and sale of fireworks, see § 21-19-15.

Power of municipalities to regulate circuses, shows, theaters, and amusements, generally, see § 21-19-33.

Regulation of places where fireworks may be exploded, see § 97-37-27.

RESEARCH REFERENCES

ALR. Liability for injury by explosive, or the like found by, or left accessible to a child. 10 A.L.R.2d 22.

Liability of seller of firearms, explosive, or highly inflammable substance to child. 20 A.L.R.2d 119.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

Am Jur. 31A Am. Jur. 2d, Explosions and Explosives §§ 12, 13.

CJS. 35 C.J.S., Explosives §§ 7-11.

§ 45-13-11. Permits for exhibitions; storage of items held for exhibitions.

The governing body of any municipality or the board of supervisors of any county outside a municipality may grant permits under which fireworks, the sale, possession or use of which is otherwise prohibited hereby, may be sold and used for exhibition purposes; however, such permit shall be issued in compliance with Section 1123 of the National Fire Protection Association, as revised, and the Mississippi Fire Prevention Code, as revised. Such permits shall require that the persons in charge of such exhibitions shall be experienced in the handling of fireworks and the members of the public attending the exhibitions shall be kept at a safe distance therefrom. Any fireworks held in storage for such exhibitions shall be kept in a closed box until removed therefrom for firing.

SOURCES: Codes, 1942, § 7015-06; Laws, 1960, ch. 249, § 6; Laws, 2004, ch. 395, § 1, eff from and after July 1, 2004.

Cross References — Power of municipalities to regulate the use and sale of fireworks, see § 21-19-15.

Power of municipalities to regulate circuses, shows, theaters, and amusements, generally, see § 21-19-33.

Regulation of places where fireworks may be exploded, see § 97-37-27.

RESEARCH REFERENCES

Am Jur. 31A Am. Jur. 2d, Explosions and Explosives §§ 12, 13.

8 Am. Jur. Legal Forms 2d, Explosions and Explosives § 106:4 (fireworks display — application for permit).

CJS. 35 C.J.S., Explosives § 3.

§ 45-13-13. Rights of municipal governing bodies and county boards of supervisors unaffected by this article.

The provisions of this article shall not in any manner limit or affect the right of the governing body of municipalities and the boards of supervisors of counties to regulate or hereafter prohibit the possession, sale and use of fireworks of any kind within the limits thereof.

SOURCES: Codes, 1942, § 7015-07; Laws, 1960, ch. 249, § 7, eff from and after June 30, 1960.

Cross References — Power of municipalities to regulate the use and sale of fireworks, see § 21-19-15.

Power of municipalities to regulate circuses, shows, theaters, and amusements, generally, see § 21-19-33.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

Am Jur. 31A Am. Jur. 2d, Explosions and Explosives §§ 12, 13.

8 Am. Jur. Legal Forms 2d, Explosions and Explosives § 106:4 (fireworks display — application for permit).

CJS. 35 C.J.S., Explosives §§ 4 et seq.

§ 45-13-15. Violations.

Any person, firm, partnership or corporation violating any provision of this article shall be guilty of a felony, and shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) and/or imprisonment in the county jail or state penitentiary not to exceed one (1) year. In addition to said criminal penalties, any person, firm, partnership or corporation violating any provision of this article shall be responsible for any and all injuries, deaths and property damage caused by or resulting from illegal fireworks sold by such person, firm, partnership or corporation which is prohibited by this article within the State of Mississippi, and any injured person or his legal representatives, shall have a right to bring a civil action against the dealer, distributor or manufacturer or person who sold said fireworks, whether said dealer, distributor or manufacturer or person be located in this state or not. Any dealer, distributor or manufacturer or person located outside of this state who shall sell fireworks in Mississippi shall make, constitute and appoint the Secretary of State as their lawful agent for service of process in any civil proceeding brought under the provisions of this article, to recover all damages caused or resulting from the sale of any fireworks prohibited by this article.

SOURCES: Codes, 1942, § 7015-08; Laws, 1960, ch. 249, § 8; Laws, 1966, ch. 376, § 2, eff from and after January 1, 1967.

Cross References — Imposition of laboratory analysis fee in addition to any other assessment and costs imposed by statutory authority for any felony conviction, see § 45-1-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

Am Jur. 31A Am. Jur. 2d, Explosions and Explosives §§ 154, 155, 162, 165, 169-174, 176-178, 191 et seq., 202, 210.

CJS. 35 C.J.S., Explosives §§ 54 et seq., 95 et seq.

Practice References. 8 Am Law Prod Liab 3d, Blasting Supplies and Fireworks § 107:4.

ARTICLE 3.

EXPLOSIVES.

SEC.
45-13-101. Seller to keep records; when sale of explosives unlawful.
45-13-103. Sales of explosives to be reported; regulation by municipalities.
45-13-105. Penalties for failure to report sale of explosives.
45-13-107. Safekeeping of explosives.
45-13-109. Reports of importation of explosives; fees; penalties.

§ 45-13-101. Seller to keep records; when sale of explosives unlawful.

Every person who sells or otherwise disposes of dynamite, nitroglycerine, explosives, gas bombs, dynamite caps, nitroglycerine caps, fuses, detonators or other similar explosives, shall keep an accurate record of the name of the purchaser, his address, quantity, and the general purpose of its intended use. It shall be unlawful to sell dynamite, nitroglycerine, explosives, gas bombs, dynamite caps, nitroglycerine caps, fuses, detonators or other similar explosives unless the person making the sale knows the purchaser and the general purpose for which such explosive or its counterpart will be used.

SOURCES: Codes, 1942, § 7015-31; Laws, 1964, ch. 337, § 1, eff from and after 30 days after passage (approved June 11, 1964).

Cross References — Illegal possession of explosives, see § 97-37-23.

Unlawful use of explosives, see § 97-37-25.

RESEARCH REFERENCES

ALR. Meaning of term "explosive" within 18 USCS § 844(i) prohibiting damage or destruction of property used in interstate commerce by means of explosive. 61 A.L.R. Fed. 899.

Admissibility, in trial for federal offense involving malicious use of explosives (under 18 USCS § 844), of evidence of taggants embedded in explosives. 70 A.L.R. Fed. 906.

Am Jur. 31A Am. Jur. 2d, Explosions and Explosives §§ 6-8.

CJS. 35 C.J.S., Explosives §§ 7-11.

§ 45-13-103. Sales of explosives to be reported; regulation by municipalities.

Every seller of dynamite, nitroglycerine, explosives, gas bombs, dynamite caps, nitroglycerine caps, fuses, detonators or other similar explosives shall report any sale, transfer of title, or removal to the sheriff of the county where such transfer or removal took place within twenty-four (24) hours on forms to be provided. Should the sale, transfer of title of removal of explosives be within a municipality, then a report shall also be made within twenty-four (24) hours to the chief of police on forms to be provided. The governing authorities of municipalities shall have the power to adopt ordinances for the further regulation and control of dynamite, nitroglycerine and similar explosives.

SOURCES: Codes, 1942, § 7015-32; Laws, 1964, ch. 337, § 2, eff from and after 30 days after passage (approved June 11, 1964).

Cross References — Illegal possession of explosives, see § 97-37-23.

Unlawful use of explosives, see § 97-37-25.

RESEARCH REFERENCES

ALR. Admissibility, in trial for federal offense involving malicious use of explosives (under 18 USCS § 844), of evidence of taggants embedded in explosives. 70 A.L.R. Fed. 906.

Am Jur. 31A Am. Jur. 2d, Explosions and Explosives §§ 6-8.

CJS. 35 C.J.S., Explosives §§ 7-11.

§ 45-13-105. Penalties for failure to report sale of explosives.

Any seller of dynamite, nitroglycerine, explosives, gas bombs, dynamite caps, nitroglycerine caps, fuses, detonators, or other similar explosives who does not report to proper authorities as required by this article shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five (5) years, or in the county jail not exceeding one (1) year.

SOURCES: Codes, 1942, § 7015-33; Laws, 1964, ch. 337, § 3, eff from and after 30 days after passage (approved June 11, 1964).

Cross References — Illegal possession of explosives, see § 97-37-23.

Unlawful use of explosives, see § 97-37-25.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see §§ 97-43-1 et seq.

§ 45-13-107. Safekeeping of explosives.

Any person who has dynamite, nitroglycerine, explosives, gas bombs, dynamite caps, nitroglycerine caps, fuses, detonators or other similar explosives in his possession and being engaged in a lawful business which ordinarily requires the use thereof in the ordinary and usual conduct of such business, and who possesses said articles for the purpose of use in said business, or any seller, dealer, or person transporting said articles, shall keep said articles under his control and secure from theft or pilferage at all times.

SOURCES: Codes, 1942, § 7015-34; Laws, 1964, ch. 337, § 4, eff from and after 30 days after passage (approved June 11, 1964).

JUDICIAL DECISIONS

1. In general.

This section codifies duty of person having possession and control of dangerous explosives to exercise highest degree of care, so that utmost caution must be used to ensure that no harm comes to other persons coming in contact with them. Kallas v. United States, 763 F. Supp. 866 (S.D. Miss. 1991).

In action for wrongful death and personal injury to children killed or injured by explosion of Army rocket with which they were playing on private property, evidence failed to present sufficient facts for court to determine liability of defendant United States under statute requiring person engaged in business of using explosives to keep such items under control and secure from theft or pilferage, as evidence did not permit reasoned evaluation and determination of circumstances and events surrounding removal of rocket from Army camp or other military installation; mere fact that it appeared at private residence does not necessarily imply statute was violated. Moreover, occurrence of theft does not necessarily establish violation of section. Also, in absence of proof as to date of removal of rocket from government property, court could not determine if removal occurred prior to effective date of statute. Breland ex rel. Breland v. United States, 791 F. Supp. 1128 (S.D. Miss. 1990).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. Pl & Pr Forms (Rev), Explosions and Explosives, Form 47 (complaint in federal court — diversity of citizenship — negligent storage of explosive material — violation of safety regulations — minor invitee permanently disabled by exploding blasting cap — against mine owner and agent by guardian ad litem).

§ 45-13-109. Reports of importation of explosives; fees; penalties.

Every person transporting or bringing dynamite, nitroglycerine, explosives, gas bombs, dynamite caps, nitroglycerine caps, fuses, detonators or other similar explosives into the State of Mississippi shall immediately report to the sheriff of the county of original entry, identify himself, give his destination and an inventory which shall be filed in a register to be kept by the sheriff. The sheriff shall, within twenty-four (24) hours, after receiving the name, destination and inventory, report same to the commissioner of public safety. For such registering and reporting, the sheriff shall be paid a fee of Three Dollars ($3.00) by the person transporting the explosives. A person transporting dynamite, nitroglycerine, explosives, gas bombs, dynamite caps, nitroglycerine caps, fuses, detonators or other similar explosives who fails to report his name, destination and inventory shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding twenty (20) years.

SOURCES: Codes, 1942, § 7015-35; Laws, 1964, ch. 337, § 5, eff from and after 30 days after passage (approved June 11, 1964).

Cross References — Illegal possession of explosives, see § 97-37-23.
Unlawful use of explosives, see § 97-37-25.

CHAPTER 14

Radiation Protection Program

Mississippi Radiation Protection Law of 1976 45-14-1
Mississippi Radioactive Waste Transportation Act 45-14-51

MISSISSIPPI RADIATION PROTECTION LAW OF 1976

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§ 45-14-1. Short title.

This chapter may be cited as the “Mississippi Radiation Protection Law of 1976.”

SOURCES: Laws, 1976, ch. 469, § 1, eff from and after passage (approved May 25, 1976).

Cross References — Exclusion of radioactive materials regulated pursuant to Mississippi Radiation Protection Law from coverage under solid wastes disposal law, see § 17-17-3.

Exclusion of radioactive materials regulated pursuant to Mississippi Radiation Protection Law from inclusion as hazardous wastes for purposes of promotion of projects for treatment of solid and hazardous wastes, see § 17-17-103.

Hazardous waste for purposes of Multimedia Waste Minimization Act as not including radioactive wastes regulated under this chapter, see § 49-31-9.

Nuclear energy generally, see §§ 57-25-1 et seq.

Comparable Laws from other States — Connecticut: Conn. Gen. Stat. § 22a-148 et seq.

Delaware: 16 Del. C. § 7401 et seq.
Florida: Fla. Stat. § 404.011 et seq.
Illinois: 420 ILCS 40/1 et seq.
Maine: 22 M.R.S. § 671 et seq.
New Hampshire: RSA 125-F:1 et seq.
New Jersey: N.J. Stat. § 26:2D-1 et seq.
New Mexico: N.M. Stat. Ann. § 74-3-1 et seq.
North Carolina: N.C. Gen. Stat. § 104E-1 et seq.
Pennsylvania: 35 P.S. § 7110.301 et seq.

RESEARCH REFERENCES

ALR. Tort liability incident to nuclear accident or explosion. 21 A.L.R.3d 1356.

Tort liability for nonmedical radiological harm. 73 A.L.R.4th 582.

Law Reviews. Bennett, Environmental Concerns in Bankruptcy Litigation. 10 Miss. C. L. Rev. 5, Fall 1989.

§ 45-14-3. Legislative declaration of policy.

It is the policy of the State of Mississippi in furtherance of its responsibility to protect the public health and safety:

(a) To institute and maintain a program to permit development and utilization of sources of radiation for purposes consistent with the health and safety of the public, and

(b) To prevent and/or reduce associated harmful effects of radiation upon the public through the institution and maintenance of a regulatory program for all sources of radiation; providing for: (1) a single, effective system of regulation within the state; (2) a system consonant insofar as possible with those of other states, and (3) compatibility with the standards and regulatory programs of the federal government for by-product, source, special nuclear materials, other radioactive materials and other sources of radiation.

SOURCES: Laws, 1976, ch. 469, § 2, eff from and after passage (approved May 25, 1976).

Comparable Laws from other States — Connecticut: Conn. Gen. Stat. § 22a-148 et seq.

Delaware: 16 Del. C. § 7401 et seq.
Florida: Fla. Stat. § 404.011 et seq.
Illinois: 420 ILCS 40/1 et seq.

Maine: 22 M.R.S. § 671 et seq.
New Hampshire: RSA 125-F:1 et seq.
New Jersey: N.J. Stat. § 26:2D-1 et seq.
New Mexico: N.M. Stat. Ann. § 74-3-1 et seq.
North Carolina: N.C. Gen. Stat. § 104E-1 et seq.
Pennsylvania: 35 P.S. § 7110.301 et seq.

§ 45-14-5. Definitions.

The following terms as used in this chapter shall have the meanings hereinafter ascribed to them, unless a different meaning is required by the context:

(a) "Act" shall mean the Mississippi Radiation Protection Law of 1976;

(b) "Agency" shall mean the Mississippi State Board of Health;

(c) "Agreement materials" shall mean those materials licensed by the state under agreement with the United States Nuclear Regulatory Commission and which include by-product, source or special nuclear materials in a quantity not sufficient to form a critical mass, as defined by the Atomic Energy Act of 1954 as amended;

(d) "Agreement state" shall mean any state which had consummated an agreement with the United States Nuclear Regulatory Commission under the authority of Section 274(b) of the Atomic Energy Act of 1954 as amended (73 Stat. 689), providing for acceptance by that state of licensing authority for agreement materials and the discontinuance of such activities by the commission;

(e) "Atomic energy" shall mean all forms of energy released in the course of nuclear fission or nuclear fusion or other atomic transformations;

(f) "Board" shall mean the state board of health;

(g) "By-product material" shall mean any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(h) "Commission" shall mean the United States Nuclear Regulatory Commission, formerly known as the United States Atomic Energy Commission;

(i) "Council" shall mean the Mississippi Radiation Advisory Council;

(j) "Electronic product" shall mean any manufactured product or device or component part of such a product or device that has an electronic circuit, which during operation can generate or emit a physical field of radiation;

(k) "Emergency" shall mean any condition existing outside the bounds of nuclear operating sites owned or licensed by a federal agency or any condition existing within or outside of the jurisdictional confines of a facility licensed by the agency and arising from by-product material, source material, special nuclear material or other radioactive materials, which is endangering or could reasonably be expected to endanger the health and safety of the public, or to contaminate the environment;

(*l*) "Ionizing radiation" shall mean gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons, and other nuclear particles; but not sound or radiowaves, or visible, infrared, or ultraviolet light;

(m) "License" shall mean a license issued pursuant to regulations promulgated under the provisions of this chapter;

(n) "Non-ionizing radiation" shall mean radiation not defined as ionizing radiation, including, but not limited to, such sources as lasers, masers or microwave devices; but does not include sonic, or infrasonic waves or thermally produced visible and infrared light;

(o) "Nuclear energy" shall mean all forms of energy released in the course of nuclear fission or nuclear fusion or other atomic transformations;

(p) "Person" shall mean any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing, other than the United States Nuclear Regulatory Commission, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, or any successor thereto;

(q) "Radiation" shall mean gamma rays and x-rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear particles, and electromagnetic radiation consisting of associated and interacting electric and magnetic waves and ultrasonic waves;

(r) "Radiation machine" shall mean any device capable of producing radiation or nuclear particles when the associated control devices of the machine are operated;

(s) "Radioactive material" shall mean any solid, liquid or gas which emits radiation spontaneously;

(t) "Registration" shall mean a registration issued pursuant to regulations promulgated under the provisions of this chapter;

(u) "Source of radiation" shall mean any radioactive material or any device or equipment emitting or capable of producing radiation;

(v) "Source material" shall mean (1) uranium, thorium or any other material which the agency declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such; or (2) ores containing one (1) or more of the foregoing materials, in such concentration as the agency declares by order to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material, and

(w) "Special nuclear material" shall mean (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the agency declares to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

SOURCES: Laws, 1976, ch. 469, § 3, eff from and after passage (approved May 25, 1976).

Federal Aspects — Atomic Energy Act of 1954, see 42 USCS §§ 2011 et seq. Section 274(b) of the Atomic Energy Act of 1954, see 42 USCS § 2021(b).

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. Legal Forms 2d, Atomic Energy § 28:12 (agreement to transfer regulatory authority over radiation hazards to state — between Nuclear Regulatory Commission and state).

§ 45-14-7. State board of health to administer statewide radiation protection program; creation and duties of state radiation advisory council.

(1) The state board of health is hereby designated as the state agency to administer a statewide radiation protection program consistent with the provisions of this chapter.

(2) There is hereby created and established the Mississippi Radiation Advisory Council as a separate division of the agency. It is made the duty of the council, and it is hereby granted the authority to:

(a) Advise the agency in the development of comprehensive policies and programs for the evaluation, determination and reduction of hazards associated with the use of radiation, and

(b) Assist in the formulation and approval of rules, regulations and standards relating to receipt, possession, use, transfer, ownership, acquisition, manufacture, production, transportation, handling, servicing, installation, storage, disposal, sale, lease or other disposition of sources of radiation as may be necessary to carry out the provisions of this chapter. The recommendation of nationally recognized bodies in the field of radiation protection shall be taken into consideration in the formulation of such rules, regulations and standards.

SOURCES: Laws, 1976, ch. 469, § 4, eff from and after passage (approved May 25, 1976).

Cross References — Duties of State Board of Health generally, see § 41-3-15.

Powers and duties of the State Board of Health concerning the transportation of radioactive waste, see §§ 45-14-51 et seq.

Appointment of a member of the Radiation Advisory Council to the Southeast Interstate Low-Level Radioactive Waste Commission, see § 57-47-3.

§ 45-14-9. Radiation advisory council; membership; meetings; quorum; compensation of members.

(1) The council shall consist of the director of radiological health within the state board of health, who shall serve ex officio as secretary, and six (6) members appointed by the state board of health as follows:

(a) One (1) member from the Mississippi Medical Association for a term of three (3) years;

(b) One (1) member from the Mississippi Dental Association for a term of three (3) years;

(c) One (1) member from the Mississippi Radiological Society for a term of four (4) years;

(d) One (1) licensed chiropractor for a term of four (4) years;

(e) One (1) member having recognized knowledge in the radiation field from private industry in Mississippi for a term of four (4) years; and

(f) One (1) member having recognized knowledge in the radiation field from one (1) of the Mississippi institutions of higher learning for a term of four (4) years.

The members described above and serving on the council on June 30, 1984, shall continue to serve on the council until the expiration of their terms.

(2)(a) The chairman of the council shall be selected by and from the council membership.

(b) The council shall meet at the call of the chairman but at least once a year.

Upon the request of three (3) or more members, it shall be the duty of the chairman to call a meeting of the council. Minutes of the meetings of the council shall be transmitted to the secretary and executive officer of the state board of health.

A majority of the council shall constitute a quorum to conduct business.

(c) Any member may be removed prior to the expiration of his term by the state board of health. His removal may be based upon wilful neglect of duty or impropriety in office.

(3) Members of the council shall be reimbursed for their actual and necessary expenses, including food, lodging and mileage as authorized by Section 25-3-41, Mississippi Code of 1972, required for attendance at council meetings. Council members shall receive a per diem for attendance at council meetings as is authorized under Section 25-3-69.

(4) All clerical and other services required by the council shall be supplied by the agency.

SOURCES: Laws, 1976, ch. 469, § 5; Laws, 1978, ch. 439, § 1; Laws, 1983, ch. 522, § 42; Laws, 1984, ch. 488, § 313, eff from and after July 1, 1984.

Cross References — Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

§ 45-14-11. General powers of state board of health.

In order to provide for the protection of the public health and safety, the agency is empowered to:

(a) Develop comprehensive policies and programs for the evaluation, determination and amelioration of hazards associated with the use of sources of radiation. Such policies and programs shall be developed with due regard for compatibility with federal programs for the control and regulation of sources of radiation;

(b) Advise, consult and cooperate with other public agencies and with affected groups and industries;

(c) Encourage, participate in or conduct studies, investigations, public hearings, training, research and demonstrations relating to the control of sources of radiation, the measurement of radiation, the effect upon public health and safety of exposure to radiation and related problems;

(d) Adopt, promulgate, amend and repeal such rules, regulations and standards which may provide for licensing or registration relating to the receipt, possession, use, transfer, ownership, acquisition, manufacture, production, transportation, handling, storage, disposal, sale, lease or other disposition of sources of radiation as may be necessary to carry out the provisions of this chapter. The recommendations of nationally recognized experts in the field of radiation protection shall be taken into consideration;

(e) Provide necessary and desirable services to any agency of the state which will acquire, lease, develop or operate land and facilities to be used for fostering development of the state's economic potential in the nuclear energy field, including, but not limited to, the concentration or storage of radioactive by-products and wastes. Such services may include, but are not limited to, site evaluation, critique of private or public site monitoring activities, and developing plans for perpetual custody and maintenance of radioactive materials held for custodial purposes at any publicly or privately operated facility located within the state;

(f) Require, for new construction and material alterations, submission of plans, specifications and reports on: (1) design and protective shielding of installations for sources of radiation, and (2) systems for the disposal of radioactive waste material and (3) the determination of any radiation hazard. The agency may render opinions, approve or disapprove such plans and specifications;

(g) Require all sources of radiation to be shielded, transported, handled, used, stored or disposed of in such manner as to comply with the provisions of this chapter and rules, regulations and standards promulgated thereunder;

(h) Collect and disseminate information relating to the control of sources of radiation, including, but not limited to: (1) maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations, and (2) maintenance of a file of registrants possessing sources of radiation requiring registration under the provisions of this chapter, and regulations thereunder, and any administrative or judicial action pertaining thereto;

(i) Require, on forms prescribed and furnished by the agency, registration, periodic re-registration, or licensing of persons to use, manufacture, produce, transport, transfer, receive, acquire, own or possess sources of radiation;

(j) Exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this chapter when the agency determines that the exemption of such sources of radiation or kinds of users or uses will not constitute a significant risk to the health and safety of the public;

(k) Promulgate rules and regulations pursuant to this chapter which may provide for recognition of other state and federal licenses and registrations as the agency shall deem desirable, subject to such requirements as it may prescribe; and exercise all incidental powers necessary to carry out the provisions of this chapter;

(*l*) Conduct environmental radiation surveillance and monitoring programs for evaluating levels of radioactive materials in the environment, including, but not limited to, levels of radioactive materials near nuclear powered electrical generating plants and other nuclear facilities;

(m) Provide, by rules and regulations, for an electronic products safety program to protect the public health and safety. Such program shall authorize regulation and inspection of sources of non-ionizing radiation throughout the state;

(n) Respond to any emergency which involves possible or actual release of radioactive materials; respond, coordinate decontamination, and otherwise protect the public health and safety in any manner deemed necessary. This chapter does not in any way, alter or change the provisions of the Executive Order No. 185, dated August 26, 1974, concerning response during an emergency by the state civil defense council;

(o) Develop and implement a responsible data management program for the purpose of collecting and analyzing statistical information necessary to protect the public health and safety; and

(p) Enforce the provisions and policies of the Southeast Interstate Low-Level Radioactive Waste Management Compact as provided in Section 57-47-1 and regulations promulgated pursuant to Section 57-47-1.

SOURCES: Laws, 1976, ch. 469, § 6; Laws, 1991, ch. 343 § 1, eff from and after passage (approved March 15, 1991).

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. Legal Forms 2d, Atomic Energy §§ 28:10 et seq (sale, possession, and use of radioactive materials and devices).

§ 45-14-13. Licensing and registration of persons to deal with sources of radiation, installations, or equipment utilizing such sources.

(1) The agency shall provide by rule and regulation, for licensing and registration of persons to use, manufacture, produce, transport, transfer, receive, acquire, own or possess sources of radiation, installations, or equipment utilizing such sources. Such rule or regulation shall provide for amendment, suspension or revocation of licenses or registrations. Each application for a specific license shall be in writing on forms prescribed and furnished by the agency and shall state, and be accompanied by, such information or

documents, including, but not limited to, plans, specifications and reports for new construction or material alterations as the agency may determine to be reasonable and necessary to decide the qualifications of the applicant to protect the public health and safety. The agency may require all applications or statements to be made under oath or affirmation. Each license shall be in such form and contain such terms and conditions as the agency may deem necessary. No license issued under the authority of this chapter and no right to possess or utilize sources of radiation granted by any license shall be assigned or in any manner disposed of; and the terms and conditions of all licenses shall be subject to amendment, revisions or modification by rules, regulations or orders issued in accordance with the provisions of this chapter.

(2) Any person who, on the effective date of any agreement with the commission, possesses a license issued by the commission shall be deemed to possess the same pursuant to a license issued under this chapter, which shall expire either ninety (90) days after receipt from the agency of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

(3) Each registration shall be in writing on forms prescribed and furnished by the agency. The agency may require all registrations or statements to be made under oath or affirmation. Each registration shall be in such form and contain such terms and conditions as the agency may deem necessary. No registration issued under the authority of this chapter and no right to possess or utilize sources of radiation granted by any registration shall be assigned or in any manner disposed of; and the terms and conditions of all registrations shall be subject to amendment, revisions or modification by rules, regulations or orders, issued in accordance with the provisions of this chapter.

SOURCES: Laws, 1976, ch. 469, § 7, eff from and after passage (approved May 25, 1976).

RESEARCH REFERENCES

Am Jur. 2A Am. Jur. Pl & Pr Forms (Rev), Atomic Energy, Forms 21 et seq (state and local regulation and control).

3 Am. Jur. Legal Forms 2d, Atomic Energy §§ 28:10 et seq. (sale, possession, and use of radioactive materials and devices); § 28:12 (agreement to transfer regulatory authority over radiation hazards to state — between Nuclear Regulatory Commission and state).

§ 45-14-15. Inspections by state board of health; training and education programs; agreements with federal and state governments.

(1) Authorized representatives of the agency shall have the authority to enter upon any public or private property of permittees, registrants and licensees, including private dwellings used for business purposes, at all reasonable times for the purpose of determining compliance with the provisions of this chapter and rules, regulations and standards adopted hereunder. Authorized representatives of the agency, only in the event of a declared

emergency, shall have the authority to enter upon any public or private property, including private dwellings used for business purposes, at all reasonable times for the purpose of determining compliance with the provisions of this chapter and rules, regulations and standards adopted hereunder.

(2) The agency is authorized to institute training programs for its personnel to carry out the provisions of this chapter and may make personnel available for participation in any program or programs of the federal government, other states or interstate agencies in furtherance of the purposes of this chapter.

(3) The agency is authorized to institute educational programs for the purpose of training or educating persons who may possess, use, handle, transport or service sources of radiation.

(4) The Governor is authorized to enter into agreements with the federal government, other states or interstate agencies, whereby this state will perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections, emergency response to radiation accidents and other functions related to the control of radiation.

SOURCES: Laws, 1976, ch. 469, § 8, eff from and after passage (approved May 25, 1976).

§ 45-14-17. Attorney General shall counsel persons against whom tort claims arise for their assistance during an emergency.

In any and all tort claims against any person which arise while that person is rendering assistance during an emergency (1) at the request of any authorized representative of the agency or (2) pursuant to an agreement for mutual state radiological assistance as provided for in Section 45-14-15(4), the provisions of Section 7-5-43, Mississippi Code of 1972, shall apply as if such person were an employee of this state.

SOURCES: Laws, 1976, ch. 469, § 9, eff from and after passage (approved May 25, 1976).

§ 45-14-19. Records to be kept by persons possessing or using sources of radiation; furnishing employees their personnel exposure records.

(1) The agency is authorized to require each person who possesses or uses a source of radiation: (a) to maintain appropriate records relating to its receipt, storage, use, transfer or disposal and maintain such other records as the agency may require, subject to such exemptions as may be provided by rules and regulations; and (b) to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring may be required by the agency, subject to such exemptions as may be provided by rules and regulations. Copies of all records required to be kept by this chapter shall be submitted to the agency or its duly authorized agents upon request.

(2) The agency is authorized to require that any person possessing or using a source of radiation, at the request of any employee, furnish to each employee for whom personnel monitoring is required a copy of such employee's personnel exposure record annually, and upon termination of employment at any time such employee has received excessive exposure.

SOURCES: Laws, 1976, ch. 469, § 10, eff from and after passage (approved May 25, 1976).

RESEARCH REFERENCES

ALR. Tort liability incident to nuclear accident or explosion. 21 A.L.R.3d 1356.

Tort liability for nonmedical radiological harm. 73 A.L.R.4th 582.

Am Jur. 2A Am. Jur. Pl & Pr Forms (Rev), Atomic Energy, Forms 71 et seq (civil liability for injuries from radiation or nuclear explosions).

9 Am. Jur. Proof of Facts, Radiation Injuries and Nuclear Energy, Proof No. 2 (detection of radiation exposure — testimony of health physicist).

§ 45-14-21. Refusal to grant license or registration; suspension, revocation or amendment of license or registration; emergency orders.

(1) The agency may refuse to grant a license or registration as provided in Sections 45-14-11 and 45-14-13 to any applicant or registrant who does not possess the requirements or qualifications which the agency may prescribe in rules and regulations, or who has been refused issuance or renewal of a license, registration, permit or certificate by a licensing or registering authority of another state or the United States Nuclear Regulatory Commission, or whose license, registration, permit or certificate has been revoked, suspended or restricted by such licensing or registering authority. The agency may suspend, revoke or amend any license or registration in the event that the person to whom such license or registration was granted violates any of the rules and regulations of the agency, or ceases, or fails to have the reasonable facilities prescribed by the agency, or has a license, registration, permit or certificate revoked, suspended or restricted by a licensing or registering authority of another state, or the United States Nuclear Regulatory Commission. Provided, that before any order is entered denying an application for a license or registration or suspending, revoking, modifying or amending a license or registration previously granted, the applicant or person to whom such license or registration was granted shall be given notice and granted a hearing by the state health officer.

(2) Whenever the agency in its opinion finds that an emergency exists requiring immediate action to protect the public health and safety, the agency may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of this chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, and on application to the agency shall be afforded a

hearing within ten (10) days. On the basis of such a hearing, the emergency order shall be continued, modified or revoked within thirty (30) days after such hearing, as the board, with consultation of the council, may deem appropriate under the evidence.

(3) Any applicant or person to whom a license or registration was granted who shall be aggrieved by any order of the agency or its duly authorized agent denying such application or suspending, revoking or amending such license or registration, may appeal directly to the chancery court of the county of his residence, or if he is a nonresident, to the Chancery Court of the First Judicial District of Hinds County, Mississippi.

SOURCES: Laws, 1976, ch. 469, § 11; Laws, 1979, ch. 399, eff from and after passage (approved March 20, 1979).

RESEARCH REFERENCES

Am Jur. 2A Am. Jur. Pl & Pr Forms (Rev), Atomic Energy, Forms 21 et seq (state and local regulation and control).

§ 45-14-23. Emergency impounding of sources of radiation.

(1) Authorized representatives of the agency shall have the authority in the event of an emergency to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder.

(2) The agency may release such sources of radiation to the owner thereof upon terms and conditions in accordance with the provisions of this chapter and rules and regulations adopted thereunder or may bring an action in the chancery court of the county wherein the cause of action occurred for an order condemning such sources of radiation and providing for their destruction or other disposition so as to protect the public health and safety.

SOURCES: Laws, 1976, ch. 469, § 12, eff from and after passage (approved May 25, 1976).

§ 45-14-25. Transportation of radioactive materials.

(1) The agency is authorized to adopt, promulgate, amend and repeal rules and regulations governing the transportation of radioactive materials in Mississippi, which, in the judgment of the council, shall promote the public health, safety or welfare and protect the environment.

(a) Such rules and regulations may include, but shall not be limited to, provisions for the use of signs designating radioactive material cargo, for the packaging, marking, loading and handling of radioactive materials and the precautions necessary to determine whether the material when offered is in proper condition for transport, and may include designation of routes in this state which are to be used for the transportation of radioactive materials.

(b) Such rules and regulations shall not include the carrier vehicle or its equipment, the licensing of packages, nor shall they apply to the handling or transportation of radioactive material within the confines of a facility licensed by or owned by a federal agency.

(c) The agency, in consultation with the council, is authorized to adopt by reference, in whole or in part, such federal rules and regulations governing the transportation of radioactive material which are established by the United States Nuclear Regulatory Commission, the United States Federal Aviation Agency, the United States Department of Transportation, the United States Coast Guard or the United States Post Office (or any federal agency which is a successor to any of the foregoing agencies), as such federal rules may be amended from time to time.

(d) The agency shall not promulgate any rules or regulations pertaining to matters within the jurisdiction of the United States Department of Transportation or the United States Federal Aviation Administration under the Hazardous Materials Transportation Act, except to the extent that the agency adopts by reference rules or regulations issued by the United States Department of Transportation or the United States Federal Aviation Administration, and except as provided in 49 USCS Section 1811(b).

(2) The agency is authorized to enter into agreements with the respective federal agencies designed to avoid duplication of effort and/or conflict in enforcement and inspection activities so that:

(a) Rules and regulations adopted by the agency pursuant to this chapter may be enforced, within their respective jurisdictions, by any authorized representatives of the agency and other state agencies, according to mutual understandings between such agencies of their respective responsibilities and authorities.

(b) The agency, through any authorized representative, is authorized to inspect any records of persons engaged in the transportation of radioactive materials during the hours of business operation when such records reasonably relate to the method or contents of packaging, marking, loading, handling or shipping of radioactive materials within the state.

(c) The agency, through any authorized representative, may enter upon and inspect the premises or vehicles of any person engaged in the transportation of radioactive materials during hours of business operation, with or without a warrant, for the purpose of determining compliance with the provisions of this chapter and the rules and regulations promulgated hereunder.

(3) Upon a determination by the agency that any provision of this chapter, or the rules and regulations promulgated hereunder, are being violated or that any practice in the transportation of radioactive materials constitutes a clear and imminent danger to the public health, property or safety, it may issue an order requiring correction.

SOURCES: Laws, 1976, ch. 469, § 13, eff from and after passage (approved May 25, 1976).

Editor's Note — 49 USCS Section 1811(b), referenced in this section, was revised and recodified by Pub. L. No. 103-272, 108 Stat. 745, effective July 5, 1994, and now appears as 49 USCS § 5125(g).

§ 45-14-27. Liability for state coordination of decontamination of radiation accidents or perpetual maintenance and custody of radioactive materials.

(1) Upon completion of any project or activity regarding emergency response to and coordination of decontamination of radiation accidents or perpetual maintenance and custody of radioactive materials, each agency of the state that has participated by furnishing personnel, equipment or material shall deliver to the agency record of the expenses incurred by that agency. The amount of incurred expenses shall be disbursed by the secretary and executive officer of the state board of health to each agency from funds available therefor. Upon completion of such project or activity, the agency shall prepare a statement of all expenses and costs for the project or activity expended by the state and shall make demand for payment upon the person having control over the radioactive materials or the release thereof which necessitated said project or activity. Any person having control over the radioactive materials or the release thereof and any other person causing or contributing to an incident necessitating such project or activity stated in this subsection shall be directly liable to the state for the necessary expenses incurred thereby and the state shall have a cause of action to recover from any or all such persons. If the person having control over the radioactive materials or the release thereof shall fail or refuse to pay the sum expended by the state, the agency shall refer the matter to the Attorney General of Mississippi who shall institute an action in the name of the state in the chancery court of the county in which the project or activity was undertaken by the state to recover such cost and expenses.

(2) In any action instituted by the attorney general under this chapter, a verified and itemized statement of the expenses incurred by the state in any project or activity stated in subsection (1) of this section, shall be filed with the complaint and shall constitute a prima facie case, and the state shall be entitled to a judgment thereon in the absence of allegation and proof on the part of the defendant or defendants that:

(a) the statement of expenses incurred by the state is not correct because of an error in the calculation of the amount due; or

(b) the statement of the amount due is not correct because of an error in not properly crediting the account with any cash payment, or payments, or other satisfaction, which may have been made thereon.

SOURCES: Laws, 1976, ch. 469, § 14, eff from and after passage (approved May 25, 1976).

RESEARCH REFERENCES

ALR. Tort liability incident to nuclear accident or explosion. 21 A.L.R.3d 1356.

Tort liability for nonmedical radiological harm. 73 A.L.R.4th 582.

Am Jur. 2A Am. Jur. Pl & Pr Forms (Rev), Atomic Energy, Forms 71 et seq (civil liability for injuries from radiation or nuclear explosions).

§ 45-14-29. Bond, insurance or other security of persons dealing in radioactive materials.

No person shall use, manufacture, produce, transport, transfer, receive, acquire, own or possess radioactive materials until that person shall have procured and filed with the agency such bond, insurance or other security as the agency may by regulation require. Such bond, insurance or other security shall:

(a) run in favor of the State of Mississippi in the amount set by the agency which shall be a reasonable amount commensurate with the possible danger and potential damage which may occur due to the use, manufacture, production, transportation, transfer, receipt, acquisition or possession of radioactive materials; provided, however, that the minimum amounts shall be as follows:

(i) One Hundred Thousand Dollars ($100,000.00) for all damages because of bodily injury sustained by one (1) person as the result of any one (1) occurrence and Three Hundred Thousand Dollars ($300,000.00) for all damages because of bodily injury sustained by two (2) or more persons as the result of any one (1) occurrence;

(ii) One Hundred Thousand Dollars ($100,000.00) for all claims arising out of damage to property as the result of any one (1) occurrence including completed operations, with an aggregate limit of Three Hundred Thousand Dollars ($300,000.00) for all property damage to which the policy applied; and

(b) have as guarantor on such bond or insurance a surety company licensed to do business in the State of Mississippi.

SOURCES: Laws, 1976, ch. 469, § 15, eff from and after passage (approved May 25, 1976).

§ 45-14-31. Schedule of fees.

All initial application and registration fee s and annual fees due under this section shall be paid directly to the agency for deposit into the Radiological Health Operations Fund in the State Treasury. The Mississippi State Board of Health shall submit its separate budget for carrying out the provisions of this chapter. The budget shall be subject to and shall comply with the requirements of the state budget law. In order to supplement state radiological health budget allocations authorized to carry out and enforce the provisions of this chapter, the agency is authorized to charge and collect fees in accordance with the following schedules:

SCHEDULE OF FEES FOR RADIOACTIVE MATERIAL LICENSES

Category		Application Fee	Annual Fee
I.	Waste Disposal		
	(a) Licenses specifically authorizing the receipt of low-level waste radioactive material from other persons for the purpose of commercial disposal by land burial by the waste disposal licensee.	$350,000.00	$350,000.00
	(b) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of packaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	$ 2,000.00	$ 2,000.00
	(c) Licenses specifically authorizing the receipt of prepackaged waste radioactive material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	$ 1,000.00	$ 1,000.00
	(d) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of super-compaction (compaction of seven-fold or greater). The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	$ 2,000.00	$ 2,000.00
	(e) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of incineration. The licensee will dispose of radioactive ash by transfer to another person authorized to receive or dispose of this material.	$ 6,000.00	$ 6,000.00
II.	Nuclear Laundries		
	Licenses for commercial collection in laundries of items	$ 4,000.00	$ 4,000.00

Category		Application Fee	Annual Fee
	contaminated with radioactive material.		
III.	Distributors of Generally Licensed Devices		
	Licenses issued to distribute items containing radioactive material to persons generally licensed.	$ 3,000.00	$ 3,000.00
IV.	Human Use		
	(a) Licenses issued for human use of radioactive material in sealed sources contained in teletherapy devices.	$ 1,300.00	$ 1,300.00
	(b) Licenses issued to physicians or medical institutions for human use of radioactive material for diagnostic purposes only.	$ 1,100.00	$ 1,100.00
	(c) Licenses issued to physicians or medical institutions for human use of radioactive material for therapeutic purposes, except licenses in category IV(a).	$ 1,300.00	$ 1,300.00
	(d) Licenses issued to physicians or medical institutions for human use of radioactive material provided by a mobile nuclear medicine service.	$ 600.00	$ 600.00
	(e) Licenses specifically authorizing mobile nuclear medicine services to licensees in categories IV(b) or IV(d).	$ 2,000.00	$ 2,000.00
	(f) Licenses specifically authorizing the use of radioactive material contained in eye applicators or bone mineral analyzers.	$ 500.00	$ 500.00
V.	Radiopharmacies Licenses specifically authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing radioactive material.	$ 3,000.00	$ 3,000.00
VI.	Industrial Radiography		
	Licenses issued for industrial radiography operations.	$ 3,000.00	$ 3,000.00
VII.	Well Logging Operations		

Category		Application Fee	Annual Fee
	(a) Licenses for possession and use of radioactive material for well logging and subsurface tracer studies.	$ 2,500.00	$ 2,500.00
	(b) Licenses for possession and use of radioactive material in markers including radioactive collars and radioactive iron nails.	$ 400.00	$ 400.00
VIII.	Irradiators		
	(a) Licenses for possession and use of radioactive material in sealed sources for irradiation of materials where the source is not removed from its shield (self-shielded units).	$ 900.00	$ 900.00
	(b) Licenses for possession and use of radioactive material in sealed sources for irradiation of materials where the source is exposed for irradiation purposes.	$ 5,000.00	$ 5,000.00
IX.	Civil Defense		
	Licenses for possession and use of radioactive material for Civil Defense activities.	$ 500.00	$ 500.00
X.	Broad Scope Licenses		
	(a) Licenses of broad scope for possession and use of radioactive material issued for educational research and development and instructional purposes.	$ 1,200.00	$ 1,200.00
	(b) Licenses of broad scope for possession and use of radioactive materials issued for human use, medical research and development and instructional purposes.	$ 2,000.00	$ 2,000.00
	(c) Licenses of broad scope for possession and use of radioactive material issued for industrial purposes.	$ 2,000.00	$ 2,000.00
XI.	Research and Development		
	(a) Licenses for possession and use of radioactive material for educational research and development and instructional purposes.	$ 900.00	$ 900.00
	(b) Licenses for possession and use of radioactive material for	$ 1,000.00	$ 1,000.00

Category		Application Fee	Annual Fee
	industrial research and development.		
XII.	Industrial Gauges		
	(a) Licenses for possession and use of fixed in-plant gauge(s) containing radioactive material.	$ 1,000.00	$ 1,000.00
	(b) Licenses for possession and use of pipe wall thickness gauge(s) containing radioactive material.	$ 1,000.00	$ 1,000.00
	(c) Licenses for possession and use of portable densitometer(s) containing radioactive material.	$ 1,000.00	$ 1,000.00
	(d) Licenses for possession and use of portable industrial gauge(s) containing radioactive material except categories XII(b) and (c).	$ 600.00	$ 600.00
XIII.	Licenses for possession and use of radioactive material for the performance of environmental tracer studies.	$ 1,500.00	$ 1,500.00
XIV.	Licenses authorizing the installation, removal, repair and maintenance of gauge(s) containing radioactive material.	$ 1,000.00	$ 1,000.00
XV.	Licenses authorizing the use of radioactive material contained in gas chromatographs.	$ 300.00	$ 300.00
XVI.	Licenses specifically authorizing decommissioning, decontamination, reclamation, or site restoration activities.	$ 3,000.00	$ 3,000.00
XVII.	Licenses specifically authorizing the removal of radioactive material from oil and/or gas tubing and equipment.	$ 1,000.00	$ 1,000.00
XVIII.	All other specific licenses other than those specified above.	$ 600.00	$ 600.00
XIX.	Additional permanent sites where radioactive material is stored or used under same license.	10% of applicable fee	10% of applicable fee

SCHEDULE OF FEES FOR GENERAL LICENSE

Initial registration and annual fees for the receipt, possession or use of radioactive material under a general license shall be per registration as follows:

(a) Certain measuring, gauging and controlling device(s).	$ 150.00	$ 150.00
(b) Generally licensed gas chromatographs.	$ 100.00	$ 100.00
(c) Static elimination device(s) and ion generating tube(s).	$ 100.00	$ 100.00
(d) Source material.	$ 100.00	$ 100.00
(e) Depleted Uranium.	$ 100.00	$ 100.00
(f) In Vitro testing and clinical labs.	$ 100.00	$ 100.00
(g) All other general license registrations other than those specified above.	$ 100.00	$ 100.00

SCHEDULE OF FEES FOR X-RAY TUBE

Fees for the initial registration and annual renewal fees of each x-ray tube shall be as follows:

X-RAY TUBES

I.	Healing Arts and Veterinary Medicine	$ 60.00
II.	Nonhealing Arts	
	(a) Industrial, other than Industrial Radiography	$ 100.00
	(b) Educational	$ 75.00

SCHEDULE OF FEES FOR INDUSTRIAL RADIOGRAPHY

X-RAY REGISTRATIONS

Fees for the initial registration and annual fees for industrial radiography x-ray devices shall be Six Hundred Dollars ($600.00).

SERVICES

Each person who assembles, installs or services radiation machines within the State of Mississippi shall pay an annual registration fee of Three Hundred Dollars ($300.00).

SCHEDULE OF FEES FOR ACCELERATORS

Fees for the initial registration and annual fees of each accelerator shall be Seven Hundred Fifty Dollars ($750.00).

SCHEDULE OF FEES FOR NEUTRON GENERATOR REGISTRATIONS

Fees for initial registration and annual fees for neutron generators shall be Six Hundred Dollars ($600.00).

SCHEDULE OF FEES FOR NUCLEAR REACTORS

A person possessing a Nuclear Regulatory Commission license or permit authorizing a nuclear reactor in the State of Mississippi for commercial production of electrical energy utilizing special nuclear material sufficient to form a critical mass, shall pay an annual fee of Twenty-five Dollars ($25.00) per megawatt (thermal) rating for each such reactor so licensed or permitted. When more than one (1) reactor is on the same site, the fee or sum of each additional reactor after the first shall be Five Dollars ($5.00) per megawatt (thermal).

SCHEDULE OF FEES FOR OUT-OT-STATE LICENSES, REGISTRANTS AND PERMITTEES

An out-of-state person possessing:

(a) A license from the United States Nuclear Regulatory Commission;

(b) A license or registration from an Agreement State or Licensing State; or

(c) A registration or permit from a state radiological health program; and who enters the State of Mississippi to conduct the activities authorized in such license, registration or permit shall pay an annual fee in accordance with the above fee schedules.

SCHEDULE OF FEES FOR TANNING EQUIPMENT

Fees for the initial registration and annual renewal of each unit of tanning equipment shall be Thirty-five Dollars ($35.00).

SOURCES: Laws, 1976, ch. 469, § 16; Laws, 1979, ch. 341; Laws, 1984, ch. 488, § 215; Laws, 1986, ch. 371, § 16; Laws, 1990, ch. 376, § 1; Laws, 1991, ch. 606, § 10; Laws, 2000, ch. 429, § 1; Laws, 2006, ch. 389, § 1, eff from and after July 1, 2006.

Federal Aspects — U.S. Nuclear Regulatory Commission generally, see 42 USCS §§ 5841 et seq.

§ 45-14-33. Unlawful acts.

It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own or possess any source of radiation unless licensed, registered or exempted by the agency in accordance with the provisions of this chapter and the rules and regulations adopted and promulgated hereunder. The provisions of this chapter regarding licensing, permits, registration and bonding shall not apply to the use, ownership, transportation, acquisition, receipt or transferral of household consumer products when so used, owned, transported, acquired, received or transferred by retailers or consumers of the State of Mississippi.

SOURCES: Laws, 1976, ch. 469, § 17, eff from and after passage (approved May 25, 1976).

§ 45-14-35. Local ordinances, resolutions and regulations relating to sources of radiation are not superseded.

Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a municipality or county or the political entity relating to sources of radiation shall not be superseded by this chapter; provided, that such ordinances or regulations are and continue to be no more restrictive than, and consistent and compatible with, the provisions of this chapter, as amended, and rules and regulations promulgated by the agency.

SOURCES: Laws, 1976, ch. 469, § 18, eff from and after passage (approved May 25, 1976).

§ 45-14-37. Penalties.

Any person who willfully and knowingly violates any provisions of this chapter or rules and regulations promulgated hereunder, or who hinders, obstructs or otherwise interferes with any authorized representative of the agency in the discharge of his official duties in making inspections as provided in Section 45-14-15(1) or in impounding sources of radiation as provided in Section 45-14-23 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00), or imprisoned for not more than thirty (30) days, or both such fine and imprisonment.

SOURCES: Laws, 1976, ch. 469, § 19, eff from and after passage (approved May 25, 1976).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 45-14-39. Report to air and water pollution control commission as to waters containing radioactive materials.

When the agency determines that any waters contain any radioactive materials, the agency shall submit a report so advising the Mississippi Air and Water Pollution Control Commission.

SOURCES: Laws, 1976, ch. 469, § 20, eff from and after passage (approved May 25, 1976).

Editor's Note — Section 49-17-7 provides that the words "Mississippi Air and Water Pollution Control Commission" wherever they may appear in the laws of the State of Mississippi shall be construed to mean the Mississippi Commission on Natural Resources. Section 49-2-6, however, provides wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Powers and duties of Air and Water Pollution Control Commission generally, see § 49-17-17.

§ 45-14-41. No state jurisdiction over federally licensed and regulated nuclear powered steam electric generating plants.

Nothing in this chapter shall be construed to confer jurisdiction to the State of Mississippi over the construction, operation or maintenance of nuclear powered steam electric generating plants licensed and regulated by the United States Nuclear Regulatory Commission or any successor agency.

SOURCES: Laws, 1976, ch. 469, § 22, eff from and after passage (approved May 25, 1976).

MISSISSIPPI RADIOACTIVE WASTE TRANSPORTATION ACT

SEC.
45-14-51. Short title.
45-14-53. Legislative purpose.
45-14-55. Definitions.
45-14-57. Permits for transportation.
45-14-59. Application for permit; liability insurance; save harmless provision.
45-14-61. Permit fee.
45-14-63. Notice of shipment.
45-14-65. Training program for public safety officials.
45-14-67. Powers and duties of state board of health.
45-14-69. Penalties.

§ 45-14-51. Short title.

Sections 45-14-51 through 45-14-69 shall be known and may be cited as the "Mississippi Radioactive Waste Transportation Act."

SOURCES: Laws, 1982, ch. 432, § 1, eff from and after passage (approved April 1, 1982).

§ 45-14-53. Legislative purpose.

The Legislature finds that the transportation of radioactive waste poses a potential threat to the health and safety of the people of Mississippi. The protection of public health and safety in the event of a transportation accident involving radioactive waste requires the preparation of emergency response procedures and the training of public safety officials in the proper response to such an incident. The costs of radiological emergency response planning for transportation accidents should properly be borne by shippers of radioactive waste.

SOURCES: Laws, 1982, ch. 432, § 2, eff from and after passage (approved April 1, 1982).

§ 45-14-55. Definitions.

The following terms shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Agency" shall mean the Mississippi Emergency Management Agency.

(b) "Radioactive waste" shall mean irradiated nuclear reactor fuel, and any other material which emits radiation which the Mississippi State Board of Health determines by regulation to present a significant threat to public health and safety.

(c) "Application" shall mean any request to the agency for a permit to transfer radioactive waste.

(d) "Carrier" shall mean and include a common, contract or private carrier of property by motor vehicle, railroad, aircraft or vessels, including barges.

(e) "Public safety official" shall mean police, fire, health, disaster or emergency management officials of the state or any of its political subdivisions.

(f) "Permit" shall mean the written authorization for the transportation of radioactive waste issued by the agency in accordance with Sections 45-14-57 et seq.

(g) "Fee" shall mean the amount of money levied against a carrier or shipper for a permit required hereunder.

(h) "Fund" shall mean the special emergency management revolving fund, authorized pursuant to the provisions of Section 33-15-11(b)(12), Mississippi Code of 1972.

(i) "Shipper" shall mean any corporation or person to whom has been issued a license authorizing the possession, use or transfer of radioactive waste by the Mississippi State Board of Health, the U. S. Nuclear Regulatory Commission, any other agreement state or any agency of the federal government exempt from licensing by the U. S. Nuclear Regulatory Commission.

(j) "Person" shall mean any corporation or individual or governmental agency of the United States.

SOURCES: Laws, 1982, ch. 432, § 3, eff from and after passage (approved April 1, 1982).

§ 45-14-57. Permits for transportation.

(1) No person shall transport radioactive waste in Mississippi except in accordance with a permit issued by the Mississippi Emergency Management Agency.

(2) The provisions of this section shall apply to all shippers, carriers and persons transporting radioactive waste in this state and shall cover all transportation into, through, or originating in this state regardless of final destination.

(3) The provisions of this section shall apply to radioactive waste shipped by or for the United States government for military or national security purposes or which are related to the national defense. Nothing contained herein shall be construed as requiring the disclosure of any defense information as defined in the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974, as amended.

SOURCES: Laws, 1982, ch. 432, § 4, eff from and after passage (approved April 1, 1982).

Federal Aspects — Atomic Energy Act of 1954, see 42 USCS §§ 2011 et seq. Energy Reorganization Act of 1974, see 42 USCS §§ 5801 et seq.

§ 45-14-59. Application for permit; liability insurance; save harmless provision.

At least thirty (30) days prior to the date upon which a shipper intends to begin the movement of radioactive waste into or within this state, the shipper shall apply to the agency for an annual permit for such shipments. Before any radioactive wastes may be transported into or within this state, the shipper shall:

(a) Comply fully with all applicable laws and administrative rules and regulations, both state and federal, regarding the packaging and transportation of radioactive wastes.

(b) Provide any information as the agency deems necessary for the protection of the health and safety of the public and the environment.

(c) Provide evidence of liability insurance sufficient to protect the state and the public at large from possible radiological injury or damage to any person or property due to packaging or transportation.

(d) Certify to the agency that it will hold the State of Mississippi harmless for all claims, actions or proceedings in law or equity arising out of radiological injury or damage to persons or property occurring during the transportation of its radioactive waste into or within the state, including all costs of defending the same; provided, however, that nothing contained herein shall be construed as a waiver of the state's sovereign immunity.

SOURCES: Laws, 1982, ch. 432, § 5, eff from and after passage (approved April 1, 1982).

RESEARCH REFERENCES

ALR. Carrier's "public duty" exception to absolute or strict liability arising out of carriage of hazardous substances. 31 A.L.R.4th 658.

§ 45-14-61. Permit fee.

Upon the approval by the agency of an application for a permit to transport radioactive waste, the shipper shall pay a permit fee based on a schedule of fees established by the agency in consultation with the state board of health. The fee shall reflect the relative hazard and potential threat to the public health and safety of the radioactive waste, based upon its volume, radioactivity and toxicity. Upon receipt of such fee the agency shall issue a permit. Such fee shall be deposited into the fund established pursuant to the provisions of Section 33-15-11(b)(12), Mississippi Code of 1972.

SOURCES: Laws, 1982, ch. 432, § 6, eff from and after passage (approved April 1, 1982).

§ 45-14-63. Notice of shipment.

The shipper shall provide to the director of the agency the advance notification of shipment required by and specified in the regulations promulgated by the Mississippi State Board of Health at the time of shipment. The agency will provide notification of shipment to appropriate state and local public safety officials.

SOURCES: Laws, 1982, ch. 432, § 7, eff from and after passage (approved April 1, 1982).

§ 45-14-65. Training program for public safety officials.

The agency, in conjunction with the state board of health, shall develop as soon as practicable a training program for public safety officials which shall include instruction on emergency response to transportation accidents involving radioactive waste.

SOURCES: Laws, 1982, ch. 432, § 8, eff from and after passage (approved April 1, 1982).

§ 45-14-67. Powers and duties of state board of health.

The Mississippi State Board of Health is hereby authorized and directed to promulgate regulations deemed necessary to implement the provisions of Sections 45-14-51 through 45-14-69.

SOURCES: Laws, 1982, ch. 432, § 9, eff from and after passage (approved April 1, 1982).

§ 45-14-69. Penalties.

Any person who willfully violates any provision of Sections 45-14-51 through 45-14-67 or any regulation or order issued hereunder may, upon conviction therefor, be punished by a fine of Five Thousand Dollars ($5,000.00) or by imprisonment for five (5) years, or both.

SOURCES: Laws, 1982, ch. 432, § 10, eff from and after passage (approved April 1, 1982).

CHAPTER 15

High Voltage Power Lines

Sec.
45-15-1. Definitions.
45-15-3. Activities performed in close proximity to high voltage overhead lines; precautions.
45-15-5. Activities performed in close proximity to high voltage overhead lines; employees.
45-15-7. Certain methods not to be employed in obtaining the required ten-foot clearance.
45-15-9. Performance of work in closer proximity to high voltage lines than permitted; notice to utility; arrangements for deterring contact with lines; binding arbitration.
45-15-11. Safety requirements and procedures required to operate crane, derrick, hoisting equipment, or similar apparatus which can be brought within ten feet of lines.
45-15-13. Violation of chapter; application of chapter.
45-15-15. Severability clause.

§ 45-15-1. Definitions.

The following words and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those instances, if any, where the context clearly indicates a different meaning:

(a) “High voltage” means a voltage in excess of six hundred (600) volts between conductors or from any conductor to ground.

(b) “Overhead lines” mean all bare or insulated electrical conductors installed above the ground.

(c) “Person” means a natural person, firm, copartnership, association, corporation or governmental entity.

(d) “Authorized person” means:

(i) An employee or agent of an electric utility which generates, transmits or delivers electricity.

(ii) An employee or agent of a utility which provides and whose work relates to communication services or state, county or municipal agencies which have authorized circuit construction on or near the poles or structures of a utility.

(iii) An employee or agent of an industrial plant whose work relates to the electrical system of the industrial plant.

(iv) An employee or agent of a cable television or communication services company or an employee of a contractor of a cable television or communication services company if specifically authorized by the owner of the poles to make cable television or communication services attachments.

(v) An employee or agent of a rail transportation company whose work relates to the electrical systems of the rail transportation company.

(vi) An employee or agent of a state, county or municipal electric utility or agency which has or whose work relates to overhead electrical lines, circuit construction or conductors on poles or structures of any type.

(e) "Electric utility" means any person engaged in the generation, transmission or distribution of electricity.

(f) "Warning sign" means a weather-resistant sign of not less than seven (7) inches by ten (10) inches reading as follows: "DANGER—UNLAWFUL TO OPERATE THIS EQUIPMENT NEARER THAN 10 FEET TO HIGH VOLTAGE OVERHEAD LINES."

SOURCES: Codes, 1942, § 7015-11; Laws, 1960, ch. 257, § 1; Laws, 1988, ch. 530, § 1, eff from and after July 1, 1988.

§ 45-15-3. Activities performed in close proximity to high voltage overhead lines; precautions.

Unless the procedures have been followed as provided by Sections 45-15-9 and 45-15-11, Mississippi Code of 1972, to deter contact with high voltage overhead lines:

(a) No person shall, individually or through an agent or employee, perform or require any other person to perform any function or activity upon any land, building, highway or other premises if at any time during the performance of that function or activity the person performing the function or activity could be reasonably expected to move or be placed within ten (10) feet of any high voltage overhead line or if any equipment or part of any tool or material used by the person could be reasonably expected to move or be placed within ten (10) feet of any high voltage overhead line during the performance of any function or activity.

(b) No person shall, individually or through an agent or employee, operate or bring any mechanical equipment or hoisting equipment or any other equipment or part of any tool or material within ten (10) feet of any high voltage overhead line.

(c) The provisions of this section shall not apply to persons lawfully occupying the land where the line is located and engaged in the regular and ordinary functions and activities of farming, ranching or other agricultural pursuits.

SOURCES: Codes, 1942, § 7015-12; Laws, 1960, ch. 257, § 2; Laws, 1988, ch. 530, § 2, eff from and after July 1, 1988.

JUDICIAL DECISIONS

1. In general.

Section 45-15-3 is designed not only to protect workers performing activities in close proximity to high power lines at the time they are performing that activity, but also to protect all other persons from the creation of a dangerous condition as a result of the erection of a building. Monroe County Elec. Power Ass'n v. Pace, 461 So. 2d 739 (Miss. 1984).

The mere fact that one unintentionally, but negligently, violates this section [Code 1942, § 7015-12], by bringing equipment within eight feet of a high voltage overhead electric power line does not mean that he has committed a misdemeanor, and moreover if one violates this statute, this act alone does not insulate the power company against its own negligence in failing to exercise due care in properly constructing its lines and maintaining and inspecting them so as to keep them in a safe condition. White v. Mississippi Power & Light Co., 196 So. 2d 343, 30 A.L.R.3d 754 (Miss. 1967).

The mere taking of the precautions prescribed by statute will not excuse an electric company having reasonable cause to anticipate danger to persons who are in close proximity to its line. Mississippi Power & Light Co. v. Walters, 248 Miss. 206, 158 So. 2d 2 (1963), corrected, 248 Miss. 268, 160 So. 2d 908 (1964).

RESEARCH REFERENCES

ALR. Liability of electric company to one other than employee, arising from its failure to shut off current. 32 A.L.R.2d 244.

Adult's intentional bodily contact with electrified wire as contributory negligence. 34 A.L.R.2d 98.

Liability for injury or death resulting when pipe or other object is manually brought into contact with electric line. 69 A.L.R.2d 9.

Liability of electric power company for injury or death resulting from contact of crane, derrick or other movable machine with electric line. 69 A.L.R.2d 93.

Liability of owner, occupant, or operator of premises or machinery or equipment for injury or death resulting from contact of crane, derrick or other movable machine with electric line. 69 A.L.R.2d 160.

Liability of power company for injury or death resulting from contact of radio or television antenna with electrical line. 82 A.L.R.3d 113.

Applicability of rule of strict liability to injury from electrical current escaping from powerline. 82 A.L.R.3d 218.

Liability for injury to or death of child from electric wire encountered while climbing tree. 91 A.L.R.3d 616.

Liability for injury or death resulting when object is manually brought into contact with, or close proximity to, electric line. 33 A.L.R.4th 809.

Liability of owner of wires, poles, or structures struck by aircraft for resulting injury or damage. 49 A.L.R.5th 659.

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 71 et seq. (tort liability — electric wires and poles — personal injury).

17 Am. Jur. Proof of Facts 2d 643, Electric Company's Failure to Exercise Reasonable Care Regarding Downed Transmission Line or Pole.

23 Am. Jur. Proof of Facts 2d 633, Electric Company's Negligence as to Workers Near Transmission Line.

CJS. 29 C.J.S., Electricity §§ 70 et seq.

§ 45-15-5. Activities performed in close proximity to high voltage overhead lines; employees.

No person shall permit any employee to do any of the things prohibited in Section 45-15-3.

SOURCES: Codes, 1942, § 7015-13; Laws, 1960, ch. 257, § 3; Laws, 1988, ch. 530, § 3, eff from and after July 1, 1988.

JUDICIAL DECISIONS

1. In general.

The mere fact that one unintentionally, but negligently, violates this section [Code 1942, § 7015-13] by bringing equipment within eight feet of a high voltage overhead electric power line does not mean that he has committed a misdemeanor, and moreover, if one violates this statute, this act alone does not insulate the power company against its own negligence in failing to exercise due care in properly constructing its lines and maintaining and inspecting them so as to keep them in a safe condition. White v. Mississippi

Power & Light Co., 196 So. 2d 343, 30 A.L.R.3d 754 (Miss. 1967).

RESEARCH REFERENCES

ALR. Liability for injury or death resulting when object is manually brought into contact with, or close proximity to, electric line. 33 A.L.R.4th 809.

Am Jur. 23 Am. Jur. Proof of Facts 2d 633, Electric Company's Negligence as to Workers Near Transmission Line.

CJS. 29 C.J.S., Electricity §§ 70 et seq.

§ 45-15-7. Certain methods not to be employed in obtaining the required ten-foot clearance.

The ten-foot clearance required in Section 45-15-3 shall not be provided by movement of the high voltage overhead line through strain impressed, by attachments, or otherwise.

SOURCES: Codes, 1942, § 7015-14; Laws, 1960, ch. 257, § 4; Laws, 1988, ch. 530, § 4, eff from and after July 1, 1988.

§ 45-15-9. Performance of work in closer proximity to high voltage lines than permitted; notice to utility; arrangements for deterring contact with lines; binding arbitration.

(1) If any person desires to carry on any function, activity, work or operation in closer proximity to any high voltage overhead line than permitted by this chapter, the person responsible for performing the work shall promptly notify the electric utility operating the high voltage overhead line, in writing, on a form to be provided by such electric utility, and shall not perform the work until mutually satisfactory arrangements have been made between such electric utility and the person or business entity responsible for performing the work, to deter contact with the high voltage overhead lines as provided in subsection (2) below, however, this requirement shall not apply to persons lawfully occupying the land where the line is located and engaged in the regular and ordinary functions and activities of farming, ranching or other agricultural pursuits.

(2) The person responsible for performing the work in the vicinity of the high voltage overhead lines shall at no cost, receive a written cost estimate from the utility for providing the necessary safety arrangements. If such person disagrees with the reasonableness of any written cost proposal or believes that the cost proposal calls for more work than is reasonably necessary to protect those working in close proximity to the high voltage overhead lines, the following options are available to such person:

(a) The electric utility shall be directed to commence work under protest; such person shall pay the electric utility for the work in accordance with the cost proposal, but shall be entitled to seek recovery of all or any part of the money paid to the electric utility in binding arbitration as is hereinafter provided; or

(b) Prior to directing the work to be performed, the person responsible for performing the work in the vicinity of high voltage overhead power lines may submit to binding arbitration, as hereinafter provided, to resolve the issues of the reasonableness and necessity of the cost, and the description of the work to be performed by the electric utility under its written cost proposal.

(3) In the event of a disagreement between the electric utility and the person responsible for performing work in the vicinity of the high voltage overhead line regarding the reasonableness or necessity of the price or the work to be performed to deter contact with high voltage overhead lines, the disputes shall be submitted to binding arbitration in accordance with the procedures set forth in Sections 11-15-101 through 11-15-143, Mississippi Code of 1972. The Public Service Commission shall serve as arbitrator for the purposes of this chapter. The demand for arbitration shall be specifically enforceable in any court of law or equity. The decision of the arbitrators as to the reasonableness or necessity of the cost or the work to be performed shall be final and binding upon the parties.

(4) The electric utility shall commence arrangements as provided herein within five (5) working days of the mutual agreement, notice to proceed under protest, or the decision of the arbitrators. Once initiated, the clearance work will continue without unreasonable interruption to completion. Should the electric utility fail to provide for temporary clearances or safety measures in a timely manner as required by this chapter, the electric utility shall be liable for costs or loss of production of the person requesting assistance to work in close proximity to high voltage overhead lines. In locations where identity of the electric utility operating the high voltage overhead lines is not easily known, the Mississippi Public Service Commission shall, upon request, provide the name, address and telephone number of such utility for notification purposes.

SOURCES: Codes, 1942, § 7015-15; Laws, 1960, ch. 257, § 5; Laws, 1988, ch. 530, § 5, eff from and after July 1, 1988.

Cross References — Prohibition of certain activities in close proximity to high voltage overhead lines unless the procedures of this section have been followed, see § 45-15-3.

RESEARCH REFERENCES

ALR. Liability of electric power company for injury or death resulting from contact of crane, derrick or other movable machine with electric line. 69 A.L.R.2d 93.

Liability of owner, occupant or operator of premises or machinery or equipment for injury or death resulting from contact of crane, derrick or other movable machine with electric line. 69 A.L.R.2d 160.

Liability of power company for injury or death resulting from contact of radio or television antenna with electrical line. 82 A.L.R.3d 113.

Applicability of rule of strict liability to injury from electrical current escaping from powerline. 82 A.L.R.3d 218.

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 71 et seq. (tort liability — electric wires and poles — personal injury).

17 Am. Jur. Proof of Facts 2d 643, Electric Company's Failure to Exercise Rea-

sonable Care Regarding Downed Transmission Line or Pole.

CJS. 29 C.J.S., Electricity §§ 70 et seq.

§ 45-15-11. Safety requirements and procedures required to operate crane, derrick, hoisting equipment, or similar apparatus which can be brought within ten feet of lines.

No person shall operate any crane, derrick, power shovel, drilling rig, pile driver, hoisting equipment, or similar apparatus, or any part thereof, which could be brought within ten (10) feet of any high voltage overhead line, unless:

(a) There is posted and maintained a warning sign, as herein defined, clearly legible and placed as follows:

(i) Within the equipment readily visible to the operator of such equipment when at the controls of such equipment; and

(ii) On the outside of the equipment in such number and location as to be readily visible to mechanics or other persons engaged in the work operations;

(b) There is installed an insulated cage-type guard or protective device about the boom or arm of all equipment, except backhoes or dippers and, where the equipment includes a lifting hook device, all lifting lines are equipped with insulator links on the lift hook connection; and

(c) A person is designated to observe clearance of the equipment from any nearby high voltage overhead lines and to give timely warning for all operations where it is difficult by visual means for the operator to determine and to maintain the required clearance.

SOURCES: Codes, 1942, § 7015-16; Laws, 1960, ch. 257, § 6; Laws, 1988, ch. 530, § 6, eff from and after July 1, 1988.

Cross References — Prohibition of certain activities in close proximity to high voltage overhead lines unless the procedures of this section have been followed, see § 45-15-3.

Employment of certain methods to obtain requisite 10-foot clearance prohibited, see § 45-15-7.

JUDICIAL DECISIONS

1. In general.

The mere fact that one unintentionally, but negligently, violates this section [Code 1942, § 7015-16] by bringing equipment within eight feet of a high voltage overhead electric power line does not mean that he has committed a misdemeanor, and moreover, if one violates this statute [Code 1942, § 7015-16], this act alone does not insulate the power company against its own negligence in failing to exercise due care in properly constructing its lines and maintaining and inspecting them so as to keep them in a safe condition. White v. Mississippi Power & Light Co., 196 So. 2d 343, 30 A.L.R.3d 754 (Miss. 1967).

§ 45-15-13. Violation of chapter; application of chapter.

(1) Any person who knowingly violates this chapter may be subject to a civil penalty in an amount not to exceed Five Thousand Dollars ($5,000.00) to be imposed by a court of competent jurisdiction against said person and such penalty shall be deposited in the General Fund.

(2) There is hereby created a right of action on behalf of any electric utility which is required to pay any sum for injury or death of any person resulting from contact with a high voltage overhead line against any person whose negligence is a proximate contributing cause of such injury or death for that portion of any non-agreed judgment for damages rendered against and paid by the electric utility and attributable to the negligence of such person, however, the electric utility may not recover any portion of such sum which is attributable to its own negligence. The right of action created hereby shall not be available against persons who comply with the provisions of this chapter, and violations of this chapter shall not be considered negligence per se but may be considered as evidence of negligence.

(3) Nothing contained in this chapter shall be construed to alter, amend, restrict or limit the liability of persons as defined herein for violation of his duty under current law to use a high degree of care in the construction, maintenance and supply of electricity; nor shall any person be relieved from liability as a result of violations of standards under existing law regarding the construction, maintenance and supply of electricity, where such failure to use a high degree of care or violations of existing standards are found to be a cause of damage to property, personal injury or death.

(4) Other than an electric utility filing a claim under this chapter, nothing contained herein shall be construed to alter, amend or expand in any way the provisions of Section 71-3-9, Mississippi Code of 1972, as to an employee, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death.

(5) Nothing contained herein shall be considered as a waiver of immunity in whole or in part as to any governmental entity or construed to alter, amend, restrict or limit in any way the protections provided in Sections 11-46-1 et seq., Mississippi Code of 1972.

(6) The provisions contained in this chapter do not apply to construction, reconstruction, operation or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures or electrical generating, transmission or distribution systems or communication systems.

SOURCES: Codes, 1942, § 7015-17; Laws, 1960, ch. 257, § 7; Laws, 1988, ch. 530, § 7, eff from and after July 1, 1988.

JUDICIAL DECISIONS

1. Liability — Apportionement of fault.

Even though an employer of a decedent was immune from suit, it was proper to allocate a portion of fault to the employer in an action against an electric company for wrongful death by electrocution from the company's power lines. Ware v. Entergy Miss., Inc., 887 So. 2d 763 (Miss. 2003).

RESEARCH REFERENCES

CJS. 29 C.J.S., Electricity §§ 70 et seq.

§ 45-15-15. Severability clause.

Each section of this chapter, and every part of each section, is hereby declared to be independent, and any court holding that any section or part thereof as void, ineffective or unconstitutional for any cause, shall not affect the other sections or parts thereof, and it is now declared that the other sections or parts of sections would have been enacted regardless of any section or parts of sections which might be held unconstitutional, inoperative or ineffective.

SOURCES: Laws, 1988, ch. 530, § 8, eff from and after July 1, 1988.

CHAPTER 17

Civil Emergencies

Sec.
45-17-1. Imposition of curfews during civil emergencies; definitions.
45-17-3. Proclamation of emergency.
45-17-5. Curfew order to state times and places applicable; maximum duration.
45-17-7. Acts and activities which may be prohibited during emergency.
45-17-9. Violations of orders may be declared misdemeanors; penalties.
45-17-11. Persons to whom curfew does not apply.
45-17-13. Repealed.

§ 45-17-1. Imposition of curfews during civil emergencies; definitions.

(a) "Civil emergency" is defined as:

(1) A riot or unlawful assembly characterized by any use of force or violence disturbing the public peace, or any threat to use such force and violence, if accompanied by immediate power of execution, by two (2) or more persons acting together and without authority of law.

(2) Any natural disaster or man-made calamity, including but not limited to flood, conflagration, cyclone, tornado, earthquake or explosion within the geographic limits of a municipality resulting in the death or injury of persons, or the destruction of property to such an extent that extraordinary measures must be taken to protect the public health, safety and welfare.

(3) The destruction of property, or the death or injury of persons brought about by the deliberate acts of one (1) or more persons acting either alone or in concert with others when such acts are a threat to the peace of the general public or any segment thereof.

(b) "Curfew" is hereby defined as a prohibition against any person or persons walking, running, loitering, standing, sitting, lying or motoring upon any alley, street, public property or vacant premises within the corporate limits of the municipality except persons officially designated to duty with reference to said civil emergency or those lawfully on the streets as defined hereinafter.

(c) "Chief administrative officer" is defined to be the mayor of any municipality. Any municipality, however, may by ordinance specially designate any official as chief administrative officer for purposes of this chapter.

SOURCES: Codes, 1942, § 8610-51; Laws, 1968, ch. 554, § 1, eff from and after passage (approved July 23, 1968).

Cross References — Mississippi Emergency Management Law, see §§ 33-15-1 et seq.

Emergency Management Assistance Compact, see §§ 45-18-1 et seq.

RESEARCH REFERENCES

ALR. Validity and construction of curfew statute, ordinance, or proclamation. 59 A.L.R.3d 321.

Validity, construction, and application of loitering statutes and ordinances. 72 A.L.R.5th 1.

§ 45-17-3. Proclamation of emergency.

When, in the judgment of the chief administrative officer of a municipality a civil emergency as defined herein is determined to exist, he shall forthwith proclaim in writing the existence of same, a copy of which proclamation will be filed with the clerk of the municipality.

SOURCES: Codes, 1942, § 8610-52; Laws, 1968, ch. 554, § 2, eff from and after passage (approved July 23, 1968).

Cross References — Mississippi Emergency Management Law, see §§ 33-15-1 et seq.

§ 45-17-5. Curfew order to state times and places applicable; maximum duration.

After proclamation of a civil emergency by the chief administrative officer, he may order a general curfew applicable to such geographical areas of the municipality or to the municipality as a whole as he deems advisable, and applicable during such hours of the day or night as he deems necessary in the interest of the public safety and welfare. Said proclamation and general curfew shall have the force and effect of law and shall continue in effect until rescinded in writing by the chief administrative officer, but not to exceed five (5) days.

SOURCES: Codes, 1942, § 8610-53; Laws, 1968, ch. 554, § 3, eff from and after passage (approved July 23, 1968).

Cross References — Mississippi Emergency Management Law, see §§ 33-15-1 et seq.

RESEARCH REFERENCES

ALR. Validity and construction of curfew statute, ordinance, or proclamation. 59 A.L.R.3d 321.

Am Jur. 53A Am. Jur. 2d, Mobs and Riots § 2.

CJS. 77 C.J.S., Riot; Insurrection §§ 30, 33 et seq.

§ 45-17-7. Acts and activities which may be prohibited during emergency.

After proclamation of a civil emergency, the chief administrative officer may at his discretion, in the interest of public safety and welfare:

(a) Order the closing of all retail liquor stores.

(b) Order the discontinuance of the sale of intoxicating liquor and/or beer.

(c) Order the discontinuance of the manufacture, transfer, use, possession or transportation of a Molotov cocktail or any other device, instrument or object designed to explode or produce uncontained combustion.

(d) Order the discontinuance of selling, distributing, dispensing or giving away of any firearms or ammunition of any character whatsoever.

(e) Issue such other orders as are necessary for the protection of life and property.

SOURCES: Codes, 1942, § 8610-54; Laws, 1968, ch. 554, § 4, eff from and after passage (approved July 23, 1968).

Cross References — Mississippi Emergency Management Law, see §§ 33-15-1 et seq.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Mobs and Riots §§ 1 et seq.

CJS. 77 C.J.S., Riots; Insurrection §§ 30, 33 et seq.

§ 45-17-9. Violations of orders may be declared misdemeanors; penalties.

Municipalities may provide by ordinance that any person violating the provisions of orders issued by the chief administrative officer pursuant to this authorization during a proclaimed civil emergency be guilty of a misdemeanor and be punished by a fine not exceeding Three Hundred Dollars ($300.00) or six (6) months imprisonment, or both such fine and imprisonment.

SOURCES: Codes, 1942, § 8610-55; Laws, 1968, ch. 554, § 5, eff from and after passage (approved July 23, 1968).

Cross References — Mississippi Emergency Management Law, see §§ 33-15-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 45-17-11. Persons to whom curfew does not apply.

Any curfew as defined hereby shall not apply to persons lawfully on the streets and public places during a civil emergency who have obtained written permission of the local chief of police or other law enforcement officer then in charge of municipal law enforcement, which permission shall be granted on good cause shown. This curfew shall not apply to medical personnel in the performance of their duties.

SOURCES: Codes, 1942, § 8610-56; Laws, 1968, ch. 554, § 6, eff from and after passage (approved July 23, 1968).

Cross References — Mississippi Emergency Management Law, see §§ 33-15-1 et seq.

§ 45-17-13. Repealed.

Repealed by Laws, 1980, ch. 491, § 37, eff from and after May 9, 1980. [Laws, 1971, ch. 411, § 1]

Editor's Note — Former § 45-17-13 authorized the use of public equipment and personnel on private property affected by a natural disaster.

CHAPTER 18

Emergency Management Assistance Compact

Sec.
45-18-1. Citation.
45-18-3. Authorization of execution of compact; terms of compact.

§ 45-18-1. Citation.

Section 45-18-3 may be cited as the Emergency Management Assistance Compact.

SOURCES: Laws, 1995, ch. 625, § 1; Laws, 2000, ch. 413, § 6, eff from and after passage (approved Apr. 17, 2000.)

Cross References — Mississippi Emergency Management Law, see §§ 33-15-1 et seq.

Civil emergencies generally, see §§ 45-17-1 et seq.

§ 45-18-3. Authorization of execution of compact; terms of compact.

The Legislature of the State of Mississippi hereby authorizes the Governor of the State of Mississippi to enter into a compact on behalf of the State of Mississippi with any other state legally joining therein, in the form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I — PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the Governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II — GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential for the safety, care and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the Governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III — PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

i. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

ii. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

iii. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

iv. Assist in warning communities adjacent to or crossing the state boundaries.

v. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services and resources, both human and material.

vi. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

vii. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty (30) days of the verbal request. Requests shall provide the following information:

i. A description of the emergency service function for which assistance is needed, such as, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

ii. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

iii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans and resource records relating to emergency capabilities.

ARTICLE IV — LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the Governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V — LICENSES AND PERMITS

Whenever any person holds a license, certificate or other permit issued by any party state to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI — LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

ARTICLE VII — SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two (2) or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel and equipment and supplies.

ARTICLE VIII — COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX — REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two (2) or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X — EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI — IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty (30) days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States government.

ARTICLE XII — VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII — ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

SOURCES: Laws, 1995, ch. 625, § 2; Laws, 2000, ch. 413, § 7, eff from and after passage (approved Apr. 17, 2000.)

Comparable Laws from other States — Alabama: Code of Ala. § 31-9-40.
Alaska: Alaska Stat. § 26.23.136.
Arizona: A.R.S. § 26-402.
Arkansas: A.C.A. § 12-49-402.
California: Cal Gov Code § 179.5.
Colorado: C.R.S. 24-60-2902.
Connecticut: Conn. Gen. Stat. § 28-23a.
Delaware: 20 Del. C. § 3401.
District of Columbia: D.C. Code § 7-2332.
Florida: Fla. Stat. §§ 252.921 -- 252.933.
Georgia: O.C.G.A. § 38-3-81.
Hawaii: HRS § 128F-2.
Idaho: Idaho Code § 46-1018A.
Illinois: 45 ILCS 15 1/5.
Indiana: Burns Ind. Code Ann. § 10-14-5-1 et seq.
Iowa: Iowa Code § 29C.21.
Kansas: K.S.A. § 48-9a01.

Kentucky: KRS § 39A.950.
Maine: 37-B M.R.S. §§ 921 -- 933.
Maryland: Md. PUBLIC SAFETY Code Ann. § 14-702.
Massachusetts: Mass. Ann. Laws Spec. Laws ch. S140, § 1.
Michigan: MCL § 3.1001.
Minnesota: Minn. Stat. § 192.89.
Montana: Mont. Code Anno., § 10-3-1001.
Nevada: Nev. Rev. Stat. Ann. § 415.010.
New Hampshire: RSA 108:3.
New Jersey: N.J. Stat. § 38A:20-5.
New Mexico: N.M. Stat. Ann. § 12-10-15.
New York: NY CLS Exec § 29-g.
North Carolina: N.C. Gen. Stat. §§ 166A-40 -- 166A-53.
Ohio: ORC Ann. 5502.40.
Oklahoma: 63 Okl. St. §§ 684.1 -- 684.13.
Oregon: ORS § 401.043.
Pennsylvania: 35 Pa.C.S. § 7601.
Puerto Rico: 1 L.P.R.A. §§ 621 -- 633.
Rhode Island: R.I. Gen. Laws §§ 30-15.9-1 -- 30-15.9-14.
South Carolina: S.C. Code Ann. § 25-9-420.
South Dakota: S.D. Codified Laws § 33-15-48.
Tennessee: Tenn. Code Ann. § 58-2-403.
Texas: Tex. Health & Safety Code § 778.001.
Utah: Utah Code Ann. § 53-2-202.
Vermont: 20 V.S.A. §§ 101 -- 112.
Vermont: 20 V.S.A. §§ 101 -- 112.
Virginia: Va. Code Ann. § 44-146.28:1
West Virginia: W. Va. Code § 15-5-22.
Wisconsin: Wis. Stat. § 166.30.
Wyoming: Wyo. Stat. § 19-13-401 et seq
Federal Aspects — Posse Comitatus Act, see 18 USCS § 1385.

CHAPTER 19

Subversive Groups and Subversive Activities

Sec.
45-19-51. Powers of Secretary of State as to subversive groups.
45-19-53. List of officers and members required to be filed; penalty for failure to furnish.
45-19-55. Persons not to attend meetings of organization or association unless lists filed.
45-19-57. District attorneys to prosecute violations of law.
45-19-59. Attorney General to proceed to dissolve subversive groups.
45-19-61. Law inapplicable to churches and national guard organizations.
45-19-63. Who is deemed a member of subversive organization.
45-19-65. Membership lists to be kept as part of permanent records of office of Secretary of State.

§ 45-19-51. Powers of Secretary of State as to subversive groups.

In those cases in which an unincorporated or incorporated organization or association having a chapter, branch, or unit in this state, has a national or state officer or director who either in the past, or at present, is, or has been, an officer, or director, of any organization, association, or group listed, or designated, as a subversive or communist-front group, or organization, by the United States Attorney General, or a congressional committee on un-American activities, the Secretary of State is authorized and empowered to request the Attorney General of the State of Mississippi, or the general legislative investigating committee, or both, to investigate that organization, association, or group which has such a chapter, branch, or unit in this state. As used in Sections 45-19-51 through 45-19-65, the term "subversive group" shall mean any group or organization so listed or designated by the United States Attorney General or a congressional committee on un-American activities.

The Attorney General of the State of Mississippi or the general legislative investigating committee, or both, when requested by the Secretary of State, shall make said investigation, and for such purpose the general legislative investigating committee is hereby vested with all powers and authority granted to said committee by Sections 5-3-1 through 5-3-25, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 4194-01; Laws, 1958, ch. 484, § 1, eff from and after passage (approved May 8, 1958).

Editor's Note — The general legislative investigating committee, referred to in this section, was abolished by Laws of 1973, ch. 331, § 12, effective March 19, 1973, which repealed §§ 5-3-1 through 5-3-25, dealing with the creation, organization, staffing, powers, duties and operation of the committee. However, §§ 5-3-27 through 5-3-31, dealing with the investigation of un-American activities in the state, were not repealed and still include provisions for the committee to make such study and to report regularly to the Legislature.

Cross References — Secretary of State, generally, see §§ 7-3-1 et seq.

Attorney General, generally, see §§ 7-5-1 et seq.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sedition, Subversive Activities, and Treason §§ 79 et seq.

§ 45-19-53. List of officers and members required to be filed; penalty for failure to furnish.

The Secretary of State shall require any officer or director or member of an organization or association described in Section 45-19-51 hereof to file with his office a full, complete, and true list of the names and addresses of all officers and members of the organization or association who are officers, directors, and members at the time of the filing of the list, or who have been officers, directors, and members at any time during the twelve (12) months preceding such date. Said lists shall be furnished by those requested to do so, or good cause shown for inability so to do, and the lists shall be certified under oath. Any person, able to furnish such list in whole or in part, who shall fail or refuse to do so, shall be deemed guilty of a misdemeanor and, upon conviction, shall be imprisoned for not less than sixty (60) days, nor more than six (6) months.

SOURCES: Codes, 1942, § 4194-02; Laws, 1958, ch. 484, § 2, eff from and after passage (approved May 8, 1958).

Cross References — Secretary of State, generally, see §§ 7-3-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 45-19-55. Persons not to attend meetings of organization or association unless lists filed.

No person shall hold, assist in holding, or attend any assembly, meeting, or gathering of an organization or association described in Section 45-19-51 hereof, or of a subdivision or subordinate chapter, unit, or other branch thereof unless the list of officers and members required by Section 45-19-53 has been filed with the Secretary of State. If any person shall violate the provisions of this section, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00), or imprisoned for not less than thirty (30) days, nor more than six (6) months, or both.

SOURCES: Codes, 1942, § 4194-03; Laws, 1958, ch. 484, § 3, eff from and after passage (approved May 8, 1958).

Cross References — Secretary of State, generally, see §§ 7-3-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 45-19-57. District attorneys to prosecute violations of law.

District attorneys, throughout this state, shall prosecute without delay any violations of Sections 45-19-51 through 45-19-65.

SOURCES: Codes, 1942, § 4194-04; Laws, 1958, ch. 484, § 4, eff from and after passage (approved May 8, 1958).

Cross References — Duty of district attorney to prosecute, generally, see § 25-31-11.

§ 45-19-59. Attorney General to proceed to dissolve subversive groups.

The Attorney General shall proceed by injunction or otherwise to dissolve any organization or association described in Section 45-19-51 or a subdivision or subordinate chapter, unit, or other branch thereof violating the provisions of Sections 45-19-51 through 45-19-65 and to prevent any meeting of the officers and members thereof.

SOURCES: Codes, 1942, § 4194-05; Laws, 1958, ch. 484, § 5, eff from and after passage (approved May 8, 1958).

Cross References — Attorney General, generally, see §§ 7-5-1 et seq.

§ 45-19-61. Law inapplicable to churches and national guard organizations.

Nothing in Sections 45-19-51 through 45-19-65 shall apply to any regularly organized churches or national guard organizations.

SOURCES: Codes, 1942, § 4194-06; Laws, 1958, ch. 484, § 6, eff from and after passage (approved May 8, 1958).

§ 45-19-63. Who is deemed a member of subversive organization.

Any person shall be deemed a member in contemplation of Sections 45-19-51 through 45-19-65, of any organization or association described in Section 45-19-51 hereof, or of any subdivision or subordinate chapter, unit, or other branch thereof, who would be considered a member in the ordinary accepted sense of the word or who has taken any oath or obligation in connection with any such organization or association, or who has received any degree or initiation from members or officers of such organization or association, or who, while living or residing in the territorial jurisdiction of any such organization or association, or any subdivision or subordinate chapter, unit, or other branch thereof, has attended and participated in meetings or assemblies thereof, or any of them, or paid dues or fees thereto.

SOURCES: Codes, 1942, § 4194-07; Laws, 1958, ch. 484, § 7, eff from and after passage (approved May 8, 1958).

§ 45-19-65. Membership lists to be kept as part of permanent records of office of Secretary of State.

The Secretary of State shall keep the lists filed with him under the terms of Section 45-19-53 as part of the permanent public records of his office.

SOURCES: Codes, 1942, § 4194-08; Laws, 1958, ch. 484, § 8, eff from and after passage (approved May 8, 1958).

Cross References — Secretary of State, generally, see §§ 7-3-1 et seq.

CHAPTER 21

Rock Festivals

Sec.
45-21-1. Rock festival defined.
45-21-3. Permit to be obtained from sheriff.
45-21-5. Permit to be obtained from sheriff; conditions of issuance.
45-21-7. Amenability to lawsuit.
45-21-9. Sheriff to obtain additional surety bond.
45-21-11. Health and safety regulations; approval of state board of health.
45-21-13. Restriction as to sale of tickets.
45-21-15. Inspection of site; notification of noncompliance.
45-21-17. Revocation of permit.
45-21-19. Penalties.
45-21-21. Recovery or other disposition of bond.

§ 45-21-1. Rock festival defined.

For the purposes of this chapter, the terms "rock festival" and "such event" mean, unless the context clearly indicates a different meaning, an actual, or a reasonably foreseeable, assembly of one thousand (1,000) or more people which does or did continue, or can reasonably be expected to continue, for a period of eighteen (18) or more consecutive hours upon private property which does not contain an established place of worship and at which the principal source of entertainment is, was or will be musical in nature.

SOURCES: Codes, 1942, § 7015-51; Laws, 1971, ch. 414, § 1, eff from and after passage (approved March 23, 1971).

§ 45-21-3. Permit to be obtained from sheriff.

Any individual, organization, corporation or other entity desiring to hold a rock festival in this state shall obtain, at least ten (10) or more days prior to the date upon which such event shall commence or be held, a written permit from the sheriff of the county in which such event is sought to be held. No rock festival shall be held in this state without a valid permit from the sheriff of such county.

SOURCES: Codes, 1942, § 7015-52; Laws, 1971, ch. 414, § 2, eff from and after passage (approved March 23, 1971).

§ 45-21-5. Permit to be obtained from sheriff; conditions of issuance.

The sheriff of such county shall issue such written permit upon presentation by the applicant of the following:

(a) A cash bond in the amount of Ten Thousand Dollars ($10,000.00) conditioned to provide security that the applicant shall assume financial responsibility for any damages to public or privately owned real or personal property, for any fine assessed for the failure to comply with the specifications and plans presented to and certified by the state board of health and with any pertinent regulations of the state board of health about which the applicant had written notice prior to certification, and for the costs of any additional law enforcement personnel or equipment reasonably expended by any political subdivision of this state, if any of these occur as a direct result of such event;

(b) A written certification by the state board of health that the written specifications and plans, proposed by the applicant, for the establishment of health and safety precautions and facilities in connection with such event for the purpose of assuring that the public health and safety will not be endangered; and

(c) Written proof of the payment of the state amusement tax as provided in Section 27-11-5, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 7015-53; Laws, 1971, ch. 414, § 3, eff from and after passage (approved March 23, 1971).

Editor's Note — Section 27-11-5, referred to in (c), was repealed by Laws of 1989, ch. 479, § 2, effective from and after July 1, 1989.

Cross References — Surety bond in addition to cash bond required by this section, see § 45-21-9.

Disposition of cash bond, see § 45-21-21.

§ 45-21-7. Amenability to lawsuit.

Any individual, organization, corporation or other entity applying for a permit to hold a rock festival in this state shall be deemed to be doing business in this state. If such applicant is a nonresident of this state, the applying for such permit shall be deemed equivalent to the appointment by such nonresident of the Secretary of State of the State of Mississippi, or his successor or successors in office, to be the true and lawful attorney or agent of such nonresident upon whom all lawful process may be served in any action or proceeding accrued or accruing from such event. Such applicant is thereby further deemed to be subject to the laws of this state, the jurisdiction of the courts of this state and the fines, damages, penalties or other rulings and decrees of such courts regardless of whether the proceeds of the cash bond have been depleted.

SOURCES: Codes, 1942, § 7015-54; Laws, 1971, ch. 414, § 4, eff from and after passage (approved March 23, 1971).

§ 45-21-9. Sheriff to obtain additional surety bond.

Upon the posting by such applicant of the cash bond pursuant to Section 45-21-5, the sheriff of such county shall secure a surety bond in the amount of Ten Thousand Dollars ($10,000.00). Such surety bond shall be in addition to the official bond of such sheriff. The premium for such surety bond shall be paid by the applicant.

SOURCES: Codes, 1942, § 7015-55; Laws, 1971, ch. 414, § 5, eff from and after passage (approved March 23, 1971).

§ 45-21-11. Health and safety regulations; approval of state board of health.

(1) The state board of health is hereby directed to establish for rock festivals health and safety regulations which shall assure that the public health and safety is not endangered hereby and which shall provide for the furnishing of adequate undertakings to secure full compliance with the sanitary code and other applicable law, adequate and satisfactory water supply and sewerage facilities, adequate drainage, adequate toilet and lavatory facilities, adequate refuse storage and disposal facilities, adequate sleeping areas and facilities, wholesome food and sanitary food service, adequate medical facilities, insect and noxious weed control, adequate fire protection and such other matters as may be appropriate for security of life or health.

(2) The state board of health is hereby authorized and empowered to approve and certify in writing the written specifications and plans proposed by any individual, organization, corporation or other entity desiring to hold a rock festival in this state. Such specifications and plans shall be submitted to the state board of health at least eighteen (18) days prior to the commencement of such event and shall conform to the health and safety regulations promulgated pursuant to this section. The state board of health shall grant such certification or deny such certification, with reasons for such denial, within eight (8) days of the submission of such specifications and plans. Such specifications and plans may be altered, with the approval of the state board of health, to conform with the health and safety regulations promulgated pursuant to this section.

(3) In the review of the specifications and plans proposed by any individual, organization, corporation or other entity desiring to hold a rock festival in this state, the state board of health may require such specific written specifications, plans and reports as are necessary for reasonable and proper review and determination in the light of the various factors therein involved, including but not limited to the probable number of people that will be in attendance at such event.

(4) The state board of health shall specify in the certification the number of tickets which may be sold or distributed within seventy-two (72) hours of the commencement of such event.

(5) Such specifications and plans may contain reasonable alternative requirements based upon different numbers of tickets having been sold and distributed.

SOURCES: Codes, 1942, § 7015-56; Laws, 1971, ch. 414, § 6, eff from and after passage (approved March 23, 1971).

§ 45-21-13. Restriction as to sale of tickets.

In order that the state board of health may establish criteria for implementing the pertinent health and safety regulations and that certification may be granted with a sufficient degree of certainty as to the probable number of people that will be in attendance at such event, no tickets of admission thereto shall be distributed or sold seventy-two (72) hours prior to the commencement of such event; provided, however, that tickets of admission may be distributed or sold within such seventy-two-hour period as specifically established by the state board of health in the certification or as approved, in writing, by the local board of health, if such additional sale or distribution of tickets can be permitted within the pertinent health and safety regulations promulgated pursuant to Section 45-21-11.

SOURCES: Codes, 1942, § 7015-57; Laws, 1971, ch. 414, § 7, eff from and after passage (approved March 23, 1971).

§ 45-21-15. Inspection of site; notification of noncompliance.

The county board of health of the county in which such event is to be held shall inspect, within seventy-two (72) and at a time no later than forty-eight (48) hours before the commencement of such event, the location or site of such event to determine whether the holder of the permit has complied with the specifications and plans certified by the state board of health. After notifying the holder of such permit of the specific items with which substantial compliance does not exist and if the holder of such permit fails to comply within twenty-four (24) hours with those items specified in the inspection as not in substantial compliance with the specifications and plans certified by the state board of health, such county board of health shall notify the sheriff of such county of the lack of substantial compliance.

SOURCES: Codes, 1942, § 7015-58; Laws, 1971, ch. 414, § 8, eff from and after passage (approved March 23, 1971).

Cross References — County department of health, see § 41-3-43.

§ 45-21-17. Revocation of permit.

Upon notification by the county board of health that the holder of a permit for such event has not substantially complied, within twenty-four (24) hours of the commencement of such event with the specifications and plans certified by the state board of health or any pertinent regulation of the state board of health about which the holder of the permit had written notice prior to such certification, the sheriff of such county shall thereupon revoke such permit.

SOURCES: Codes, 1942, § 7015-59; Laws, 1971, ch. 414, § 9, eff from and after passage (approved March 23, 1971).

Cross References — County department of health, see § 41-3-43.

§ 45-21-19. Penalties.

(1) Any individual, organization, corporation or other entity, holding or sponsoring a rock festival in this state without having obtained a written permit for such event from the sheriff of the county in which such event is held, shall be subject to a fine of no more than Twenty Thousand Dollars ($20,000.00). This subsection shall not apply to a holder of a permit which has been revoked by the sheriff upon notification by the county board of health of such county of the lack of substantial compliance with the specifications and plans certified by the state board of health.

(2) Any individual, organization, corporation or other entity, holding or sponsoring a rock festival in this state with a permit which has been revoked by the sheriff upon notification by the county board of health of such county of the lack of compliance with the specifications and plans certified by the state board of health, shall be subject to a fine of no more than Ten Thousand Dollars ($10,000.00).

(3) In addition to the penalties authorized in subsections (1) and (2) of this section, any individual, organization, corporation or entity holding or sponsoring a rock festival in this state in violation of the certification of the state board of health or any pertinent regulation of the state board of health about which the applicant had written notice prior to such certification, shall be subject to a fine of not more than One Thousand Dollars ($1,000.00) for each violation thereof.

SOURCES: Codes, 1942, § 7015-60; Laws, 1971, ch. 414, § 10, eff from and after passage (approved March 23, 1971).

§ 45-21-21. Recovery or other disposition of bond.

(1) If no court action or proceeding has been instituted against the holder of such permit to recover property damage incurred as a direct result of such event, if no fine assessed against the holder of such permit for failure to substantially comply with the specifications and plans certified by the state board of health or any pertinent regulation of the state board of health about which the holder of the permit had written notice prior to such certification remains unpaid and if no additional law enforcement expense remains unpaid, then sixty (60) days after the conclusion of such event the sheriff shall return the full amount of the cash bond to the party posting it thereof.

(2) If a court action or proceeding has been instituted against the holder of such permit, then the sheriff shall place such cash bond with such court where such action or proceeding has been instituted to be placed in escrow. If no such court action or proceeding has been instituted but a fine assessed against the holder of such permit for failure to comply with the health and safety regulations remains unpaid, or if any additional law enforcement expense remains unpaid, then the sheriff shall reimburse the political subdivision reasonably incurring such legitimate additional law enforcement expenses, the sheriff shall forward to the court assessing such fine portions of the cash bond to meet such obligations and the sheriff shall forward the remainder

of such cash bond returned to the party posting. If the cash bond is insufficient to meet such obligations, then the cash bond shall be apportioned equally among such court and such political subdivision.

SOURCES: Codes, 1942, § 7015-61; Laws, 1971, ch. 414, § 11, eff from and after passage (approved March 23, 1971).

CHAPTER 23

Boiler and Pressure Vessel Safety

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45-23-1. Title.
45-23-3. Application.
45-23-5. Definitions.
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45-23-11. Prohibition against nonconforming installation or operation; special permit.
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45-23-37. Hydrostatic tests.
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45-23-47. Invalidation of inspection certificate upon termination of insurance.
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45-23-55. Boiler and pressure vessel safety fund.
45-23-57. Appeal to board.
45-23-59. Review of board action.
45-23-61. Legislative power of city, town, or other governmental subdivision.

§ 45-23-1. Title.

This chapter shall be cited as the "Mississippi Boiler and Pressure Vessel Safety Law of 1974."

SOURCES: Laws, 1974, ch. 500 § 1, eff from and after passage (approved April 2, 1974).

Editor's Note — Laws of 1974, ch. 500, § 21, effective from and after passage (approved April 2, 1974), provides as follows:

"SECTION 21. Section 71-1-51, Mississippi Code of 1972, which provides for inspection of steam boilers is hereby repealed. All other acts and parts of acts inconsistent with any provision of this act are hereby repealed to the extent of such inconsistency. The effective date of such repeal shall be the date on which the rules and regulations pursuant to this act first becomes effective."

RESEARCH REFERENCES

ALR. Boiler and machinery insurance: risks and losses covered. 8 A.L.R.2d 403.

Am Jur. 42 Am. Jur. 2d, Inspection Laws §§ 7 et seq.

61 Am. Jur. 2d, Plant and Job Safety-OSHA and State Laws §§ 1 et seq.

13 Am. Jur. Trials 343, Boiler Explosion Cases.

CJS. 39A C.J.S., Health and Environment § 5.

§ 45-23-3. Application.

This chapter, except as otherwise herein provided, shall apply to all boilers and pressure vessels operating or intended for operation in the State of Mississippi or its territories.

SOURCES: Laws, 1974, ch. 500, § 2, eff from and after passage (approved April 2, 1974).

§ 45-23-5. Definitions.

The words, terms and phrases when used in this chapter shall have the meanings ascribed to them herein unless the context requires otherwise:

(1) "Boiler" shall mean a closed vessel in which water is heated, steam or high temperature liquid is generated, steam is superheated, or in which any combination of these functions is accomplished, under pressure or vacuum, for use externally to itself by the direct application of energy from the combustion of fuels, or from other high temperature fluids, or from electricity or nuclear energy. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

(a) "Power boiler" shall mean a boiler in which steam or other vapor is generated at a pressure of more than fifteen (15) pounds per square inch gauge (hereinafter referred to as psig).

(b) "High pressure, high temperature water boiler" shall mean a water boiler operating at pressures exceeding one hundred sixty (160) psig, or temperatures exceeding two hundred fifty (250) degrees Fahrenheit.

(c) "Heating boiler" shall mean a steam or vapor boiler operating at pressures not exceeding fifteen (15) psig, or a hot water boiler operating at pressures not exceeding one hundred sixty (160) psig, or temperatures not exceeding two hundred fifty (250) degrees Fahrenheit.

(2) "Pressure vessel" shall mean a vessel in which the pressure is obtained from an external source or by the application of heat from an indirect source or from a direct source other than those vessels defined in paragraph (1) of this section.

(3) "Certificate inspection" shall mean an inspection, the report of which is used by the chief inspector to decide whether or not a certificate as provided by Sections 45-23-41 through 45-23-49 may be issued. This certificate inspection shall be an internal inspection when construction permits; otherwise it shall be as complete an inspection as possible.

SOURCES: Laws, 1974, ch. 500, § 2, eff from and after passage (approved April 2, 1974).

§ 45-23-7. Advisory committee.

(1) There is hereby created within the State of Mississippi a technical advisory committee of boiler and pressure vessel safety (hereinafter advisory committee). It shall be the purpose of this committee: (a) to recommend the adoption of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers as the basis for judging the safe condition of boilers and pressure vessels, (b) to recommend the qualifications of inspectors who will certify as to the safe condition of boilers and pressure vessels, and (c) to recommend the inspection of boilers and pressure vessels as necessary to insure that all such boilers and pressure vessels manufactured and/or used in this state are safe for use.

(2) The technical advisory committee of boiler and pressure vessel safety shall consist of seven (7) members who shall be appointed by the Governor with the advice and consent of the senate: one (1) for a term of one (1) year, two (2) for a term of two (2) years, two (2) for a term of three (3) years, and two (2) for a term of four (4) years. At the expiration of their respective terms of office, they, or their successors who shall be identifiable with the same interests respectively as hereinafter provided, shall be appointed for terms of four (4) years each. Upon the death or incapacity of any member, the Governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his predecessor was identified.

Of these seven (7) appointed members, the majority of whom shall be registered professional engineers in the State of Mississippi: one (1) shall be a representative of owners and users of power boilers having experience with such boilers, one (1) shall be a representative of owners and users of heating boilers having experience with such boilers, one (1) shall be a representative of engineering and architectural firms having experience with the design and installation inspection of boilers and/or pressure vessels, one (1) shall be a representative of owners and users of pressure vessels having experience with such vessels, one (1) shall be a representative of boiler or pressure vessel manufacturers who have manufacturing facilities in this state, one (1) shall be a representative of a company licensed to insure and insuring in this state boilers and pressure vessels, and one (1) shall be a mechanical engineer on the faculty of a recognized engineering college within the state.

(3) The advisory committee shall elect one (1) of its members to serve as chairman, and at the call of the chairman the committee shall meet at least four (4) times each year at Jackson or such other place within the State of

Mississippi designated by the committee. No recommended action of the committee shall be effective unless adopted by the vote of at least four (4) members thereof.

(4) The members of the advisory committee shall serve without salary, but shall be entitled to receive a per diem as is authorized under Section 25-3-69 and their actual expenses incurred while in the performance of their duties as members of the committee.

SOURCES: Laws, 1974, ch. 500, § 3; Laws, 1983, ch. 522, § 43, eff from and after July 1, 1983.

Cross References — Traveling expenses of state officers and employees, see § 25-3-41.

§ 45-23-9. Rules and regulations.

(1) The advisory committee shall recommend the adoption of definitions, rules and regulations for the safe construction, installation, inspection, care and good practice in the operation, maintenance an repair of boilers and pressure vessels by the state board of health (hereinafter board).

(a) The definitions, rules and regulations so formulated for new construction shall be based upon and at all times follow the generally accepted nationwide engineering standards, formulae and practices established and pertaining to boiler and pressure vessel construction and safety, and the advisory committee shall at its first meeting recommend the adoption of an existing published codification thereof known as the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (hereinafter ASME), with the amendments, code cases and interpretations thereto made and approved by ASME, and may likewise recommend the amendments and interpretations subsequently made and published by the same authority; and when so adopted, the same shall be deemed incorporated into and to constitute a part of the whole of the definitions, rules and regulations of the committee. Amendments, code cases and interpretations to the code so adopted shall be effective immediately upon being promulgated, to the end that the definitions, rules and regulations shall at all times follow the generally accepted nationwide engineering standards.

(b) The advisory committee shall recommend the adoption of rules and regulations for the inspection, care and good practice in operation, maintenance and repair of boilers and pressure vessels which were in use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations become effective, or during the twelve (12) month period immediately thereafter. The rules and regulations so formulated and recommended shall be based upon and at all times follow the generally accepted nationwide engineering standards.

(2) The rules and regulations and any subsequent amendments thereto adopted by the board shall, immediately following a hearing upon not less than thirty (30) days notice as hereinafter provided, be approved and published and

when so promulgated shall have the force and effect of law, except that the rules applying to the construction of new boilers and pressure vessels shall not become mandatory until twelve (12) months after their promulgation by the board. Subsequent amendments to the rules and regulations adopted by the board shall be permissive immediately and shall become mandatory twelve (12) months after their promulgation.

(3) Notice of the hearing shall give the time and place of the hearing and shall state the matters to be considered. Such notice shall be given to all persons directly affected by such hearing. In the event all persons directly affected are unknown, notice shall be perfected by publication in a newspaper of general circulation in the northern, central and southern supreme court districts of this state at least thirty (30) days prior to such hearing.

SOURCES: Laws, 1974, ch. 500, § 4, eff from and after passage (approved April 2, 1974).

§ 45-23-11. Prohibition against nonconforming installation or operation; special permit.

No boiler or pressure vessel which does not conform to the rules and regulations of the board governing new construction and installation shall be installed and operated in this state after twelve (12) months from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective, unless the boiler or pressure vessel is of special design or construction and is not inconsistent with the spirit and safety objectives of such rules and regulations, in which case a special installation and operating permit may, at its discretion, be granted by the board.

SOURCES: Laws, 1974, ch. 500, § 5, eff from and after passage (approved April 2, 1974).

§ 45-23-13. Maximum allowable pressure.

(1) The maximum allowable pressure of a boiler carrying the ASME code symbol or of a pressure vessel carrying the ASME or API-ASME code symbol shall be determined by the applicable sections of the code under which it was constructed and stamped.

(2) The maximum allowable pressure of a boiler or pressure vessel which does not carry the ASME or the API-ASME code symbol shall be computed in accordance with generally accepted nationwide engineering standards as required by the board.

(3) This chapter shall not be construed as in any way preventing the use, sale or reinstallation of a boiler or pressure vessel referred to in subsections (1) and (2), provided it has been made to conform to the rules and regulations of the board governing existing installations and provided, further, it has been found upon inspection to be in a safe condition and that an inspection certificate can be issued.

SOURCES: Laws, 1974, ch. 500, § 6, eff from and after passage (approved April 2, 1974).

§ 45-23-15. Exemptions.

(1) This chapter shall not apply to the following boilers and pressure vessels:

(a) Boilers and pressure vessels located on United States Government property and/or under federal government control and pipelines, including compressors and related facilities, which are subject to inspection by any agency of the federal government or other agency of the State of Mississippi;

(b) Pressure vessels used for transportation and storage of compressed gases when constructed in compliance with specifications of the U.S. Department of Transportation and when charged with gas, marked, maintained and when periodically requalified for use, as required by appropriate regulations of the U.S. Department of Transportation;

(c) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers or freight;

(d) Air tanks installed on the right-of-way of railroads and used directly in the operation of trains;

(e) Pressure vessels that do not exceed (i) five (5) cubic feet in volume and two hundred fifty (250) psig pressure, or (ii) one and one-half (1-½) cubic feet in volume and six hundred (600) psig pressure, or (iii) an inside diameter of six (6) inches or less with no limitation on pressure;

(f) Pressure vessels operating at a working pressure not exceeding fifteen (15) psig;

(g) Vessels with a nominal water-containing capacity of one hundred twenty (120) gallons or less for containing water under pressure, including those containing also air, the compression of which serves only as a cushion;

(h) Boiler and pressure vessels constructed and operated under licenses and permits granted by the U.S. Atomic Energy Commission;

(i) Boilers and pressure vessels used in connection with the production, treating, processing, storage or transportation of oil or natural gas, when located in areas which are remote from places of human habitation or public congregation.

(2) The following boilers and pressure vessels shall be exempt from the requirements of Sections 45-23-31 through 45-23-55:

(a) Heating boilers which are located in private residences or in apartment houses of less than six (6) family units;

(b) Pressure vessels containing only water under pressure for domestic supply purposes, including those containing also air, the compression of which serves only as a cushion or airlift pumping system when located in private residences or in apartment houses of less than six (6) family units, or those serving rural water systems;

(c) Pressure vessels which are covered under the Liquefied Compressed Gas Equipment Inspection Law of Mississippi, being Sections 75-57-1 through 75-57-63, Mississippi Code of 1972;

(d) Air receiving tanks and attached tanks used in connection with automobile filling stations that do not exceed fifteen (15) cubic feet in volume and two hundred fifty (250) psig pressure and that are used primarily to increase air pressure in automobile tires.

SOURCES: Laws, 1974, ch. 500, § 7; Laws, 1978, ch. 521, § 1; Laws, 1992, ch. 534, § 1; Laws, 1993, ch. 323, § 1, eff from and after July 1, 1993.

Editor's Note — The U.S. Atomic Energy Commission, referred to in paragraph (1)(h) of this section, was abolished by Public Law 93-438, October 11, 1974, effective January 19, 1975, and its functions either allowed to lapse or transferred to other agencies, primarily the Nuclear Regulatory Commission (see 42 USCS §§ 5841 et seq.) and the Energy Research and Development Administration, now the Department of Energy (see 42 USCS §§ 7101 et seq).

§ 45-23-17. Chief inspector; qualifications.

The board shall employ a chief inspector who shall be a citizen of this state, or if no suitable person is available a citizen of another state, who shall have had at the time of such appointment not less than ten (10) years experience in the construction, installation, inspection, operation, maintenance or repair of high pressure boilers and pressure vessels as a mechanical engineer, steam operating engineer, boilermaker or boiler inspector, and who shall have passed the same kind of examination as that prescribed under Section 45-23-23, and who should be, whenever possible, a registered professional engineer in this state. Such appointment shall be made within sixty (60) days after passage of this chapter and at any time thereafter that the office of the chief inspector may become vacant. Such chief inspector may be removed for cause after due investigation by the board.

SOURCES: Laws, 1974, ch. 500, § 8, eff from and after passage (approved April 2, 1974).

Cross References — Chief inspector's bond, see § 45-23-29.

§ 45-23-19. Chief inspector; duties and powers.

The chief inspector, if authorized by the board, is hereby charged, directed and empowered:

(a) to take action necessary for the enforcement of the laws of the State of Mississippi governing the use of boilers and pressure vessels to which this chapter applies and of the rules and regulations of the board;

(b) to keep a complete record of the type, dimensions, maximum allowable pressure, age, location, and all inspection reports of all boilers and pressure vessels to which this chapter applies;

(c) to publish and make available to anyone requesting them copies of the rules and regulations promulgated by the board;

(d) to issue, or to suspend or revoke for cause, inspection certificates as provided for in Sections 45-23-41 through 45-23-49;

(e) to cause the prosecution of all violators of the provisions of this chapter;

(f) to draw from the special fund created by Sections 45-23-53 through 45-23-55 any funds appropriated or authorized to be expended by the legislature for the purpose of implementing and administering this chapter. These expenditures may include but are not necessarily limited to the necessary traveling expenses of the chief inspector and his deputies and the expense incident to the maintenance of the chief inspector's office;

(g) to maintain a list of qualified inspectors or other persons eligible to make inspections within this state and its territories.

SOURCES: Laws, 1974, ch. 500, § 9, eff from and after passage (approved April 2, 1974).

§ 45-23-21. Deputy inspectors; inspection service; special inspectors.

The board:

(a) may employ deputy inspectors who shall be responsible to the chief inspector and who shall have had at the time of appointment not less than five (5) years experience in the construction, installation, inspection, operation, maintenance or repair of high pressure boilers and pressure vessels as a mechanical engineer, steam operating engineer, boilermaker or boiler inspector, and who shall have passed the examination provided for in Section 45-23-23.

(b) shall, upon the request of any company licensed to insure and insuring in this state boilers and pressure vessels or, upon the request of any company operating boilers and/or pressure vessels in this state for which the owner or user maintains a regularly established inspection service which is under the supervision of one or more engineers whose qualifications are satisfactory to the board and causes said pressure vessels to be regularly inspected and rated by such inspection service in accordance with applicable provisions of the rules and regulations adopted by the board pursuant to Section 45-23-9, issue to any inspectors of said company licenses as special inspectors, provided that each such inspector before receiving his license shall satisfactorily pass the examination provided for by Section 45-23-23; or in lieu of such examination the board may accept persons who hold a license or a certificate of competency as an inspector of boilers and pressure vessels for a state that has a standard of examination substantially equal to that of the State of Mississippi.

(i) A license as a special inspector shall be issued to a qualified employee of a company operating boilers and/or pressure vessels in this state only if, in addition to meeting the requirements stated herein, the person is employed full time by the company and is responsible for making inspections of pressure vessels used or to be used by such company and which are not for resale.

(ii) Such special inspectors shall receive no salary from, nor shall any of their expenses be paid by, the state; and the continuance of a special inspector's license shall be conditioned upon his continuing in the employ of the insurance company duly authorized as aforesaid or upon continuing in the employ of the company so operating pressure vessels in this state and upon his maintenance of the standards imposed by this chapter.

(iii) Such special inspectors shall inspect all boilers and pressure vessels insured or all boilers and/or pressure vessels operated by their respective companies, and when so inspected the owners and users of such boilers and pressure vessels shall be exempt from payment to the state of inspection fees provided for in Section 43-23-53.

SOURCES: Laws, 1974, ch. 500, § 10, eff from and after passage (approved April 2, 1974).

Editor's Note — Section 43-23-53 referred to in (b)(iii) was repealed by Laws of 1999, ch. 432, § 2, effective from and after May 28, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965).

Cross References — Deputy inspector's bond, see § 45-23-29.

§ 45-23-23. Examination for inspectors.

(1) The examination for chief, deputy or special inspector shall be in writing and shall be by the merit system of the board under the rules of procedure during the examination. Application for examination shall be in writing on forms provided by the board and shall be accompanied by a fee of Twenty-five Dollars ($25.00). Such examination shall be confined to questions, the answers to which will aid in determining the fitness and competency of the applicant for the intended service.

(2) In case an applicant for an inspector's license fails to pass the examination, he may appeal to the merit system of the board for another examination which shall be given by the board within ninety (90) days.

(3) The record of an applicant's examination shall be accessible to said applicant and his employer.

SOURCES: Laws, 1974, ch. 500, § 11; Laws, 1978, ch. 521, § 2, eff from and after July 1, 1978.

§ 45-23-25. Suspension or revocation of inspector's license.

(1) An inspector's license may be suspended by the chief inspector, after due investigation and approval by the board, for the incompetence or untrustworthiness of the holder thereof or for willful falsification of any matter or statement contained in his application or in a report of any inspection made by him. Written notice of any such suspension shall be given by the chief inspector within not more than ten (10) days thereof to the inspector and his employer.

A person whose license has been suspended shall be entitled to an appeal to the board, as provided in Section 45-23-57, and to be present in person or to be represented by counsel at the hearing of the appeal.

(2) If the board has reason to believe that a licensed inspector is no longer qualified to hold his license, the board shall, upon not less than ten (10) days' written notice to the inspector and his employer, hold a hearing at which such inspector and his employer shall have an opportunity to be heard. If, as a result of such hearing, the board shall find that such inspector is no longer qualified to hold his license, the board shall instruct the chief inspector that such license shall be revoked and the chief inspector shall thereupon revoke such license forthwith.

(3) A person whose license has been suspended shall be entitled to apply, after ninety (90) days from the date of such suspension for reinstatement of such license.

SOURCES: Laws, 1974, ch. 500, § 12, eff from and after passage (approved April 22, 1974).

§ 45-23-27. Replacement of lost or destroyed license.

If a license is lost or destroyed, a new license shall be issued in its place without another examination.

SOURCES: Laws, 1974, ch. 500, § 13, eff from and after passage (approved April 2, 1974).

§ 45-23-29. Inspectors' bonds.

The chief inspector shall furnish a bond in the sum of Five Thousand Dollars ($5,000.00), and each of the deputy inspectors employed and paid by the state shall furnish a bond in the sum of Two Thousand Dollars ($2,000.00), conditioned upon the faithful performance of their duties and upon a true account of monies handled by them respectively and the payment thereof to the proper recipient. The cost of said bonds shall be paid from funds appropriated by the legislature for administration of this chapter.

SOURCES: Laws, 1974, ch. 500, § 14, eff from and after passage (approved April 22, 1974).

§ 45-23-31. Access to premises.

Any duly authorized representative of the board shall have free access, during reasonable hours, to any premises in the state where a boiler or pressure vessel is being constructed for use in, or is being installed in, this state for the purpose of ascertaining whether such boiler or pressure vessel is being constructed and installed in accordance with the provisions of this chapter.

SOURCES: Laws, 1974, ch. 500, § 15(1), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-33. Inspection requirements.

On and after the effective date of the rules and regulations first promulgated by the board, each boiler and pressure vessel used or proposed to be used within this state, except boilers or pressure vessels exempt under Section 45-23-15, shall be thoroughly inspected as to their construction, installation and condition as follows:

(a) Power boilers and high pressure, high temperature water boilers shall receive a certificate inspection annually or as the board may require and shall also be externally inspected annually while under pressure if possible.

(b) Heating boilers shall receive a certificate inspection biennially.

(c) Pressure vessels subject to internal corrosion shall receive a certificate inspection biennially.

(d) Pressure vessels not subject to internal corrosion shall receive a certificate inspection at intervals set by the board, but internal inspection shall not be required of pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, heads or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, or from evidence that the vessel parts are isolated from the contents with a corrosion resistant lining, provided that such vessels are constructed in accordance with the rules and regulations of the board, and provided further that evidence proving noncorrosiveness is approved by the board.

(e) Nuclear vessels within the scope of this chapter shall be inspected and reported in such form and with such appropriate information as the board shall designate.

(f) A grace period of two (2) months beyond the periods specified in paragraphs (a), (b), (c) and (d) may elapse between certificate inspections.

(g) The board may, in its discretion, permit longer periods between certificate inspections.

(h) Under the provisions of this chapter, the board shall provide for the safety of life, limb and property, and therefore has jurisdiction over the interpretation and application of the inspection requirements as provided for in the rules and regulations which they have promulgated. Inspection during construction and installation shall certify as to the minimum requirements for safety. Inspection requirements of operating equipment shall be in accordance with generally accepted practice and compatible with the actual service conditions, such as: (i) previous experience, based on records of inspection, performance and maintenance; (ii) location, with respect to personnel hazard; (iii) quality of inspection and operating personnel; (iv) provision for related safe operation controls; (v) interrelation with other operations outside the scope of this chapter.

Based upon documentation of such actual service conditions by the owner or user of the operating equipment, the board may, in its discretion, permit variations in inspection requirements.

SOURCES: Laws, 1974, ch. 500, § 15(2), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-35. Who may make required inspections.

The inspections herein required shall be made by the chief inspector, by a deputy inspector, or by a special inspector provided for in this chapter.

SOURCES: Laws, 1974, ch. 500, § 15(3), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-37. Hydrostatic tests.

If the inspector can show due cause that a hydrostatic test is necessary it shall be made by the owner or user of the boiler or pressure vessel, at the owner's or user's expense.

SOURCES: Laws, 1974, ch. 500, § 15(4), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-39. Inspection during construction.

All boilers, other than cast iron sectional boilers, and pressure vessels to be installed in this state after the twelve (12) month period from the date upon which the rules and regulations of the board shall become effective, shall be inspected during construction as required by the applicable rules and regulations of the board by an inspector authorized to inspect boilers and pressure vessels in this state, or, if constructed outside of the state, by an inspector holding a license issued by an organization approved by the board.

SOURCES: Laws, 1974, ch. 500, § 15(5), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-41. Procedure in general by companies employing special inspectors; exemption.

Each company employing special inspectors, except a company operating boilers and/or pressure vessels covered by owner or user inspection service meeting the requirements of Section 45-23-21(b) shall, within thirty (30) days following each certificate inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms as promulgated by the board. If such report shows that a boiler or pressure vessel is found to comply with the rules and regulations of the board, the owner or user thereof shall pay directly to the board the fee of Twenty Dollars ($20.00) for an annual certificate or Thirty Dollars ($30.00) for a biennial certificate, and the chief inspector or his duly authorized representative shall issue to such owner or user an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be operated.

Such inspection certificate shall be valid for not more than fourteen (14) months from its date in the case of power boilers and high pressure, high temperature water boilers, and for not more than twenty-six (26) months in the case of heating boilers and pressure vessels.

In the case of those boilers and pressure vessels covered by Section 45-23-33(a), (b), (c) and (d) for which the board has established or extended the operating period between required inspections, pursuant to the provisions of Section 45-23-33(g) or (h), the certificate shall be valid for a period not more than two (2) months beyond the period set by the board.

Certificates shall be posted under glass in the room containing the boiler or pressure vessel inspected. If the boiler or pressure vessel is not located within the building, the certificate shall be posted in a location convenient to the boiler or pressure vessel inspected, or in any place where it will be accessible to interested parties.

Air tanks used to inflate automobile tires shall be exempt from the inspection requirements of this section.

SOURCES: Laws, 1974, ch. 500, § 16(1); Laws, 1978, ch. 380, § 1; Laws, 1992, ch. 534, § 2; Laws, 1993, ch. 323, § 2; Laws, 2008, ch. 316, § 1, eff from and after July 1, 2008.

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-43. Procedure by companies covered by owner or user inspection service meeting statutory requirements.

Each company operating boilers and/or pressure vessels covered by owner or user inspection service meeting the requirements of Section 45-23-21(b) shall maintain in its files an inspection record which shall list, by number and such abbreviated description as may be necessary for identification, each pressure vessel covered by this chapter, the date of the last inspection of each such unit, and for each pressure vessel the approximate date for the next inspection thereof arrived at by applying the appropriate rules therefor to all data available at the time such inspection record is compiled. Such inspection record shall be readily available for examination by the chief inspector or his authorized representative during business hours.

SOURCES: Laws, 1974, ch. 500, § 16(2), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-45. Statement by company covered by owner or user inspection service; filing fee.

Each such company shall, in addition, file annually with the board a statement, signed by the engineer having supervision over the inspections made during the period covered thereby, stating the number of vessels covered by this chapter inspected during the year and certifying that each such inspection was conducted pursuant to the inspection requirements provided for by this chapter. Such annual statement shall be accompanied by a filing fee in accordance with the following schedule:

(a) For statements covering not more than twenty-five (25) vessels—Three Dollars ($3.00) per vessel.

(b) For statements covering more than twenty-five (25) but less than one hundred one (101) vessels—Seventy-five Dollars ($75.00).

(c) For statements covering more than one hundred (100) but less than five hundred one (501) vessels—One Hundred Fifty Dollars ($150.00).

(d) For statements covering more than five hundred (500) vessels—Three Hundred Dollars ($300.00).

SOURCES: Laws, 1974, ch. 500, § 16(3), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-47. Invalidation of inspection certificate upon termination of insurance.

No inspection certificate issued for an insured boiler or pressure vessel based upon a report of a special inspector shall be valid after the boiler or pressure vessel for which it was issued shall cease to be insured by a company duly authorized by this state to provide such insurance.

SOURCES: Laws, 1974, ch. 500, § 16(4), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-49. Suspension of inspection certificate.

The board or its authorized representative may at any time suspend an inspection certificate when, upon a showing of due cause, the boiler or pressure vessel for which it was issued cannot be operated without menace to the public safety, or when the boiler or pressure vessel is found not to comply with the rules and regulations herein provided. Each suspension of an inspection certificate shall continue in effect until such boiler or pressure vessel shall have been made to conform to the rules and regulations of the board, and until said inspection certificate shall have been reinstated.

SOURCES: Laws, 1974, ch. 500, § 16(5), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-51. Violations; penalties.

After twelve (12) months following the date of issuance of the rules and regulations by the board, it shall be unlawful for any person, firm, partnership or corporation to operate in this state or its territories a boiler or pressure vessel, except a boiler and/or pressure vessel covered by owner or user inspection service as provided for in Sections 45-23-43 and 45-23-45, without a valid inspection certificate. The operation of a boiler or pressure vessel without such inspection certificate, or at a pressure exceeding that specified in such inspection certificate, shall constitute a misdemeanor on the part of the owner, user or operator thereof and shall be punishable by a fine not exceeding Five Hundred Dollars ($500.00) or imprisonment not to exceed six (6) months, or both. Each day of such unlawful operation shall be deemed a separate offense.

SOURCES: Laws, 1974, ch. 500, § 17, eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inspection Laws §§ 13, 14.

CJS. 39A C.J.S., Health and Environment § 47.

§ 45-23-53. Fees where inspection made by chief inspector or his deputy.

The owner or user of a boiler or pressure vessel required by this chapter to be inspected by the chief inspector, of his deputy inspector, shall pay directly to the board, upon completion of inspection, fees as specified by the board in the rules and regulations.

(a) Fee schedules set by the board shall be reasonable and practical but shall be set at a level which, in conjunction with the fees collected under

Sections 45-23-41 through 45-23-45, will make this activity reasonably self-supporting.

(b) A group of pressure vessels, such as the rolls of a paper machine or dryer operating as a single machine or unit, shall be considered as one (1) pressure vessel.

(c) Not more than one (1) fee shall be charged or collected for any and all inspections of any pressure vessel in any required inspection period.

(d) When it is necessary to make a special trip to witness the application of a hydrostatic test, an additional fee based on the scale of fees applicable to a certificate inspection of the boiler or pressure vessel shall be charged.

SOURCES: Laws, 1974, ch. 500, § 18(1), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-55. Boiler and pressure vessel safety fund.

There is hereby created a special fund in the state treasury to be known as the boiler and pressure vessel safety fund into which shall be deposited all funds appropriated by the legislature for the implementation of this chapter, and funds from fees, fines and any other source that shall be used for the implementation and administration of this chapter by the Mississippi State Board of Health.

SOURCES: Laws, 1974, ch. 500, § 18(2), eff from and after passage (approved April 2, 1974).

Cross References — Exemption of certain boilers and pressure vessels from the requirements of this section, see § 45-23-15.

§ 45-23-57. Appeal to board.

Any person aggrieved by an order or an act of the board or the chief inspector under this chapter may, within fifteen (15) days' notice thereof, appeal from such order or act to the board which shall, within thirty (30) days thereafter, issue an appropriate order either approving or disapproving said order or act. A copy of such order by the board shall be given to all interested parties.

SOURCES: Laws, 1974, ch. 500, § 19(1), eff from and after passage (approved April 2, 1974).

§ 45-23-59. Review of board action.

Within thirty (30) days after any order or act of the board, any person aggrieved thereby may file a petition in the circuit court of the county of the aggrieved for a review thereof. The court shall summarily hear the petition and may make any appropriate order.

SOURCES: Laws, 1974, ch. 500 § 19(2), eff from and after passage (approved April 2, 1974).

§ 45-23-61. Legislative power of city, town, or other governmental subdivision.

No city, town or other governmental subdivision shall have the power to make any laws, ordinances or resolutions providing for the construction, installation, inspection, operation, maintenance or repair of boilers and pressure vessels within the limits of such city, town or governmental subdivision, and any such laws, ordinances or resolutions heretofore made or passed shall be and are hereby declared void and of no effect.

SOURCES: Laws, 1974, ch. 500, § 20, eff from and after passage (approved April 2, 1974).

CHAPTER 25

Identification Cards for Non-Drivers [Repealed]

§§ 45-25-1 through 45-25-21 Repealed.

Repealed by Laws, 1988, ch. 570, § 9, eff from and after July 1, 1988. [Laws, 1979, ch. 426, §§ 1-11; Laws, 1981, ch. 440, §§ 1, 2]

Editor's Note — Former Chapter 25, containing §§ 45-25-1 through 45-25-21, pertained to identification cards for non-drivers.

For provisions dealing with the issuance of identification cards by the Department of Public Safety, formerly contained in this chapter, see §§ 45-35-1 et seq.

CHAPTER 27

Mississippi Justice Information Center

Sec.
45-27-1. Legislative findings and declaration of purpose.
45-27-3. Definitions.
45-27-5. Mississippi Justice Information System established; director; personnel.
45-27-7. Duties and functions of the Justice Information Center.
45-27-8. Mississippi Justice Information Center authorized to charge fees for services and reports.
45-27-9. Submission of data to center by criminal justice agencies; center to promptly purge records upon receipt of lawful expunction order; new or upgraded computerized records management systems to be formatted to Department of Justice approved format.
45-27-11. Review or challenge of criminal offender records; correction of errors in records.
45-27-12. Dissemination of certain criminal history record information for non-criminal justice purposes.
45-27-13. Penalties.
45-27-15. Provisions to be controlling; juvenile offenders; maintenance and dissemination of more detailed information.
45-27-17. Counties, municipalities and users of network authorized to pay pro rata cost of justice information center.
45-27-19. Exemption of records.
45-27-21. Database of all expunction and nonadjudication orders created; accessibility to database.

§ 45-27-1. Legislative findings and declaration of purpose.

The Legislature finds and declares that a more effective administrative structure now is required to control the collection, storage, dissemination and use of criminal offender record information. These improvements in the organization and control of criminal offender record keeping are imperative both to strengthen the administration of criminal justice and to assure appropriate protection of rights of individual privacy. The purposes of this chapter are (a) to control and coordinate criminal offender record keeping within this state; (b) to assure periodic reporting to the Governor and Legislature concerning such record keeping; and (c) to establish a more effective administrative structure for the collection, maintenance, retrieval and dissemination of criminal history record information described in this chapter, consistent with those principles of scope and security prescribed by this chapter, and to facilitate the practical use of criminal offender record information within the criminal justice system.

SOURCES: Laws, 1980, ch. 555, § 1; reenacted, Laws, 1983, ch. 381, § 1; Laws, 2001, ch. 500, § 13; Laws, 2007, ch. 436, § 1, eff from and after July 1, 2007.

Editor's Note — Laws of 1980, ch. 555, § 11, provided for the repeal of the sections of the law that established the Mississippi Justice Information Center (Laws of 1980, ch. 555, codified as §§ 45-27-1 et seq.) from and after June 30, 1983. Subsequently, Laws of 1983, ch. 381, § 10, effective June 30, 1983, repealed Laws of 1980, ch. 555, § 11.

JUDICIAL DECISIONS

1. In general.

Records of criminal offenses are kept pursuant to § 45-27-1. The legislature of Mississippi has specifically authorized expungement of criminal offender records in limited cases-youth court cases, §§ 43-21-159 and 43-21-265; first offense misdemeanor convictions occurring prior to age 23, § 99-19-71; drug possession convictions occurring prior to age 26, § 41-29-150; purchase of alcoholic beverages by one under age 21, § 67-3-70; and municipal court convictions, § 21-23-7. Expungement of felony convictions which arose pursuant to guilty pleas are governed by § 99-15-57 which provides that any person who pled guilty within 6 months prior to the effective date of § 99-15-26 may apply to the court for an order expunging his or her criminal records. Under §§ 99-15-57 and 99-15-26 a circuit court has the power to expunge a felony conviction pursuant to a guilty plea under certain conditions. Accordingly, a petitioner who pled guilty to the felony of burglary might have been eligible for relief pursuant to §§ 99-15-57 and 99-15-26 if his guilty plea had occurred on or after October 1, 1982, that being the earliest date to satisfy the "within 6 months prior to" March 31, 1983, requirement of § 99-15-57. However, the petitioner pleaded guilty to burglary on October 9, 1979, 3 years prior to October 1, 1982, and admitted that he did not fall within the criterion in any of the statutes authorizing expungement, and thus the trial court did not err in denying his petition for expungement. Caldwell v. State, 564 So. 2d 1371 (Miss. 1990).

To require a prisoner to exhibit himself for the purpose of identification or to submit to the taking of photographs and fingerprints does not violate the prisoner's constitutional rights against self-incrimination. Smith v. State, 229 So. 2d 551 (Miss. 1969).

After the defendant had confessed to an indictable offense, the interrogating officer had sufficient grounds upon which to arrest him and thereafter to take the picture and fingerprints of the defendant. Smith v. State, 229 So. 2d 551 (Miss. 1969).

Fingerprints are admissible in evidence in order to establish the identity of a party where the comparison of a developed fingerprint with that of the party alleged to have made it is shown. McLain v. State, 198 Miss. 831, 24 So. 2d 15 (1945).

Superintendent of identification of a city police department, who was a graduate of a recognized fingerprint school, had twelve years practical experience, and was an officer of an international association for identification, was fully qualified as a fingerprint expert. McLain v. State, 198 Miss. 831, 24 So. 2d 15 (1945).

ATTORNEY GENERAL OPINIONS

Under Section 45-27-1 a policeman or a sheriff can trace a person's tag number on NCIC's computer if they have been given a tip or have reason to believe a certain vehicle may be violating some alcoholic beverage law. Capps, December 7, 1995, A.G. Op. #95-0800.

The Mississippi Justice Information Act creates a comprehensive scheme for the collection, storage, and dissemination of criminal records, and the information contained in the Mississippi Justice Information Center's database is not subject to release under the Mississippi Public Records Act of 1983. Spann, Oct. 27, 2000, A.G. Op. #2000-0553.

§ 45-27-3. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed to them in this section unless the context requires otherwise:

(a) "Criminal justice agencies" means public agencies at all levels of government which perform as their principal function activities relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

(b) "Offense" means an act which is a felony or a misdemeanor.

(c) "Justice information system" means those agencies, procedures, mechanisms, media and forms, as well as the information itself, which are or become involved in the origination, transmittal, storage, retrieval and dissemination of information related to reported offenses and offenders, and the subsequent actions related to the events or persons.

(d) "Criminal justice information" means the following classes of information:

(i) "Secret data," which includes information dealing with those elements of the operation and programming of the Mississippi Justice Information Center computer system and the communications network and satellite computer systems handling criminal justice information which prevents unlawful intrusion into the system.

(ii) "Criminal history record information," which means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, affidavits, information or other formal charges and any disposition arising therefrom, sentencing, correctional supervision and release. The term does not include identification information such as fingerprint records or images to the extent that the information does not indicate involvement of the individual in the criminal justice system.

(iii) "Sensitive data," which contains statistical information in the form of reports, lists and documentation which may identify a group characteristic, such as "white" males or "stolen" guns.

(iv) "Restricted data," which contains information relating to data-gathering techniques, distribution methods, manuals and forms.

(v) "Law enforcement agency" or "originating agency" or "agency" which includes a governmental unit or agency composed of one or more persons employed full time or part time by the state as a political subdivision thereof for the following purposes: (A) the administration of criminal justice, which includes the prevention and detection of crime; the apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; or the collection, storage and dissemination of criminal history record information; or (B) the enforcement of state laws or local ordinances, which includes making arrests for crimes while acting within the scope of their authority. The agency must perform one or more of the above-described criminal justice duties and allocate a substantial part of its annual budget to the administration of criminal justice.

(e) "Center" means the Mississippi Justice Information Center or the Mississippi Criminal Information Center.

(f) "Department" means the Mississippi Department of Public Safety.

(g) "Conviction information" means criminal history record information disclosing that a person was found guilty of, or has pleaded guilty or nolo contendere to, a criminal offense in a court of law, together with any sentencing information. This includes a conviction in a federal or military tribunal, including a court martial conducted by the Armed Forces of the United States, or a conviction for an offense committed on an Indian Reservation or other federal property, or any court of a state of the United States.

(h) "Nonconviction information" means arrest without disposition information if an interval of one (1) year has elapsed from the date of arrest and no active prosecution for the charge is pending, as well as all acquittals and all dismissals.

(i) "Arrest card" means the initial law enforcement agency documentation of an arrest, whether in physical or digital form, including fingerprint information.

(j) "Disposition form" means the form prescribed by rule of the Justice Information Center for a court or law enforcement agency to report the disposition of the case of a person who has been arrested.

(k) "Disposition" means the outcome of the case of a person who was arrested and includes, without limitation:

(i) Nonadjudication;
(ii) A verdict or plea of guilt;
(iii) A plea of nolo contendere;
(iv) A verdict of not guilty;
(v) Dismissal;
(vi) Nolle prosequi;
(vii) Remand to the file;
(viii) Expunction; or
(ix) An appeal.

SOURCES: Laws, 1980, ch. 555, § 2; reenacted, Laws, 1983, ch. 381, § 2; Laws, 2001, ch. 500, § 14; Laws, 2014, ch. 403, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "the" for "such" in (c) and (d)(ii); added (i), (j), and (k); and made minor stylistic changes.

Cross References — Administrative Procedures Act, see §§ 25-43-1.101 et seq.

ATTORNEY GENERAL OPINIONS

Agencies that are not criminal justice agencies may receive information only upon a showing that the information will be used for the prevention or detection of crime or the apprehension of criminal offenders; this ordinarily does not include background checks of employees of agencies that are not criminal justice agencies. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

If fingerprint information is maintained as part of a record of a conviction that is ordered expunged, the fingerprint information must be expunged; however, if fingerprint information is obtained and maintained for other purposes, the destruction of the information is not mandated. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

§ 45-27-5. Mississippi Justice Information System established; director; personnel.

(1) There is hereby established within the Mississippi Department of Public Safety a system for the communication of vital information relating to crimes, criminals and criminal activity to be known as the Mississippi Justice Information Center. Central responsibility for the development, maintenance and operation of the center shall be vested with the director of the Mississippi Justice Information Center.

(2) The director of the center shall maintain the necessary staff to enable the effective and efficient performance of the duties and responsibilities ascribed to the center. Such staff shall include but not be limited to statistical analysis personnel and field monitoring personnel, along with the support services to be procured within state government.

(3) All personnel of the center shall be subject to approval by the state personnel board, with due recognition to be given to the special qualifications and availability of the types of individuals required for such employment.

SOURCES: Laws, 1980, ch. 555, § 3; reenacted and amended, Laws, 1983, ch. 381, § 3, eff from and after June 30, 1983.

§ 45-27-7. Duties and functions of the Justice Information Center.

(1) The Mississippi Justice Information Center shall:

(a) Develop, operate and maintain an information system which will support the collection, storage, retrieval and dissemination of all data described in this chapter, consistent with those principles of scope, security and responsiveness prescribed by this chapter.

(b) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards and related training assistance necessary for the uniform operation of the statewide center.

(c) Offer assistance and, when practicable, instruction to all local law enforcement agencies in establishing efficient local records systems.

(d) Make available, upon request, to all local and state criminal justice agencies, to all federal criminal justice agencies and to criminal justice agencies in other states any information in the files of the center which will aid such agencies in the performance of their official duties. For this purpose the center shall operate on a twenty-four-hour basis, seven (7) days a week. Such information, when authorized by the director of the center, may also be made available to any other agency of this state or any political subdivision thereof and to any federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders.

(e) Cooperate with other agencies of this state, the crime information agencies of other states, and the national crime information center systems of the Federal Bureau of Investigation in developing and conducting an interstate, national and international system of criminal identification and records.

(f) Make available, upon request, to nongovernmental entities or employers certain information for noncriminal justice purposes as specified in Section 45-27-12.

(g) Institute necessary measures in the design, implementation and continued operation of the justice information system to ensure the privacy and security of the system. Such measures shall include establishing complete control over use of and access to the system and restricting its integral resources and facilities and those either possessed or procured and controlled by criminal justice agencies. Such security measures must meet standards developed by the center as well as those set by the nationally operated systems for interstate sharing of information.

(h) Provide data processing for files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property and such other files as may be of general assistance to law enforcement agencies; provided, however, that the purchase, lease, rental or acquisition in any manner of "computer equipment or services," as defined in Section 25-53-3, Mississippi Code of 1972, shall be subject to the approval of the Mississippi Information Technology Services.

(i) Maintain a field coordination and support unit which shall have all the power conferred by law upon any peace officer of this state.

(2) The department, including the investigative division or the center, may:

(a) Obtain and store fingerprints, descriptions, photographs and any other pertinent identifying data from crime scenes and on persons who:

(i) Have been or are hereafter arrested or taken into custody in this state:

1. For an offense which is a felony;
2. For an offense which is a misdemeanor;
3. As a fugitive from justice; or

(ii) Are or become habitual offenders; or

(iii) Are currently or become confined to any prison, penitentiary or other penal institution; or

(iv) Are unidentified human corpses found in the state; or

(v) Have submitted fingerprints for conducting criminal history record checks.

(b) Compare all fingerprint and other identifying data received with that already on file and determine whether or not a criminal record is found for such person, and at once inform the requesting agency or arresting officer of those facts that may be disseminated consistent with applicable security and privacy laws and regulations. A record shall be maintained for a minimum of one (1) year of the dissemination of each individual criminal history, including at least the date and recipient of such information.

(c) Establish procedures to respond to those individuals who file requests to review their own records, pursuant to Sections 45-27-11 and 45-27-12, and to cooperate in the correction of the central center records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of an individual.

(d) Retain in the system the fingerprints of all law enforcement officers and part-time law enforcement officers, as those terms are defined in Section 45-6-3, and of all applicants to law enforcement agencies.

(3) There shall be a presumption that a copy of any document submitted to the center in accordance with the provisions of Section 45-27-9 that has been processed as set forth in this chapter and subsequently certified and provided by the center to a law enforcement agency or a court shall be admissible in any proceeding without further authentication unless a person objecting to that admissibility has successfully challenged the document under the provisions of Section 45-27-11.

SOURCES: Laws, 1980, ch. 555, § 4; reenacted, Laws, 1983, ch. 381, § 4; Laws, 2001, ch. 500, § 15; Laws, 2006, ch. 383, § 1; Laws, 2007, ch. 436, § 2; Laws, 2008, ch. 484, § 1, eff from and after July 1, 2008.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2)(d). The word “enforcement” was inserted following “part-time law.” The Joint Committee ratified the correction at its May 31, 2006, meeting.

Editor’s Note — Chapter 622 of Laws of 1995 (§ 25-53-3) changed the name of the “Central Data Processing Authority” (CDPA) to the “Mississippi Department of Information Technology Services” (MDITS) and provided that wherever the terms “Central Data Processing Authority” and “authority,” when referring to the Central Data Processing Authority, are used in any law, the same shall mean the Mississippi Department of Information Technology Services.

Cross References — Mississippi Department of Information Technology Services generally, see §§ 25-53-1 et seq.

ATTORNEY GENERAL OPINIONS

The release of information pursuant to subsection (d) is not limited to personnel of those agencies who meet the definition of a “law enforcement officer” under Section 45-6-3 and is, therefore, certified. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

RESEARCH REFERENCES

ALR. Right of exonerated arrestee to have fingerprints, photographs, or other criminal identification or arrest records expunged or restricted. 46 A.L.R.3d 900.

Am Jur. 21A Am. Jur. 2d, Criminal Law § 542.

21A Am. Jur. 2d, Criminal Law §§ 1217 et seq.

41 Am. Jur. Trials 681, Computer Research for the Trial Lawyer.

§ 45-27-8. Mississippi Justice Information Center authorized to charge fees for services and reports.

The center, by direction of the Commissioner of the Department of Public Safety, shall establish and collect fees reasonably calculated to reimburse the center for the actual cost of searching, reviewing, duplicating and mailing records or information of any kind maintained by the center and authorized for release by this chapter.

No records shall be furnished by the center which are classified as confidential by law.

All fees collected by the center pursuant to this chapter shall be deposited into the Criminal Information Center Special Fund hereby created in the State Treasury. Monies deposited in such fund shall be expended by the center, as authorized and appropriated by the Legislature, to defray the expenses of the center. Any revenue in the fund which is not encumbered at the end of the fiscal year shall not lapse to the State General Fund but shall remain in the special fund.

SOURCES: Laws, 2001, ch. 500, § 16, eff from and after July 1, 2001.

§ 45-27-9. Submission of data to center by criminal justice agencies; center to promptly purge records upon receipt of lawful expunction order; new or upgraded computerized records management systems to be formatted to Department of Justice approved format.

(1) All criminal justice agencies within the state shall submit to the center an arrest card that will transmit fingerprints, descriptions, photographs (when specifically requested), and other identifying data on persons who have been lawfully arrested or taken into custody in this state for all felonies and misdemeanors as described in Section 45-27-7(2)(a). It shall be the duty of all chiefs of police, sheriffs, district attorneys, courts, court clerks, judges, parole and probation officers, wardens or other persons in charge of correctional institutions in this state to furnish the center with all data required by the rules duly promulgated under the Administrative Procedures Act to carry out its responsibilities under this chapter, and the duty of courts and court clerks to submit a disposition form for every disposition. It shall be the duty of all criminal justice agencies within the state to supply the prosecutor and the proper court with the disposition form that is attached to the physical arrest card if fingerprints were taken manually or, if fingerprints were captured digitally, the disposition form generated by the electronic fingerprint device at the time of the arrest.

(2) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, fingerprints according to the fingerprint system of identification established by the Director of the Federal Bureau of Investigation, full face and profile photographs (if equipment is available) and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in subsection (1) of this section, of all persons arrested or taken into custody as fugitives from justice and of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file. Any record taken in connection with any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall be purged from the files of the center and destroyed upon receipt by the center of a lawful expunction order. All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrests or takings into custody which result in release without charge or subsequent exoneration from criminal liability within twenty-four (24) hours of the release or exoneration.

(3) Fingerprints and other identifying data required to be taken under subsection (2) shall be forwarded within twenty-four (24) hours after taking for filing and classification, but the period of twenty-four (24) hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo Available" and the photographs shall be forwarded subsequently if the center so requests.

(4) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. Also, the agency concerned must annually, no later than January 31 of each year and at other times if requested by the center, confirm all arrest warrants which continue to be outstanding. Upon receipt of a lawful expunction order, the center shall purge and destroy files of all data relating to an offense when an individual is subsequently exonerated from criminal liability of that offense. The center shall not be liable for the failure to purge, destroy or expunge any records if an agency or court fails to forward to the center proper documentation ordering the action.

(5) All persons in charge of state correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the Director of the Federal Bureau of Investigation or as otherwise directed by the center, and full face and profile photographs of all persons received on commitment to the institutions. The prints so taken shall be forwarded to the center, together with any other identifying data requested, within ten (10) days after the arrival at the institution of the person committed. At the time of release, the institution will again obtain fingerprints, as before, and forward them to the center within ten (10) days, along with any other related

information requested by the center. The institution shall notify the center immediately upon the release of the person.

(6) All persons in charge of law enforcement agencies, all court clerks, all municipal justices where they have no clerks, all justice court judges and all persons in charge of state and county probation and parole offices, shall supply the center with the information described in subsections (4) and (10) of this section on the basis of the forms and instructions for the disposition form to be supplied by the center.

(7) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with guidelines established by the center. All law enforcement agencies and correctional institutions in this state having criminal identification files shall cooperate in providing the center with copies of the items in the files which will aid in establishing the nucleus of the state criminal identification file.

(8) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as is practical after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed a crime. The report shall be made within a reasonable time period following the reporting department's or agency's determination that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(9) All law enforcement agencies in the state shall immediately notify the center if at any time after making a report as required by subsection (8) of this section it is determined by the reporting department or agency that a person is no longer wanted or that a vehicle or property stolen has been recovered. Furthermore, if the agency making the apprehension or recovery is not the one which made the original report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery using methods prescribed by the center.

(10) All law enforcement agencies in the state and clerks of the various courts shall promptly report to the center all instances where records of convictions of criminals are ordered expunged by courts of this state as now provided by law. The center shall promptly expunge from the files of the center and destroy all records pertaining to any convictions that are ordered expunged by the courts of this state as provided by law.

(11) The center shall not be held liable for the failure to purge, destroy or expunge records if an agency or court fails to forward to the center proper documentation ordering the action.

(12) Any criminal justice department or agency making an expenditure in excess of Five Thousand Dollars ($5,000.00) in any calendar year on software or programming upgrades concerning a computerized records management system or jail management system shall ensure that the new or upgraded system is formatted to Department of Justice approved XML format and that

no impediments to data sharing with other agencies or departments exist in the software programming.

SOURCES: Laws, 1980, ch. 555, § 5; reenacted, Laws, 1983, ch. 381, § 5; Laws, 2001, ch. 500, § 17; Laws, 2007, ch. 436, § 3; Laws, 2014, ch. 403, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (1), inserted "an arrest card that will transmit" near the beginning; substituted "all data required by the rules duly promulgated under the Administrative Procedures Act" for "any other data deemed necessary by the center"; and added "and the duty … of the arrest" at the end; deleted "such" following "requested by the center, confirm all" in (4); inserted "for the disposition form" in (6); and substituted "the" for "such" once in (2) and (11) and twice in (4), (5), (7), and (9).

ATTORNEY GENERAL OPINIONS

When a record of a conviction is ordered expunged, the Mississippi Justice Information Center must destroy electronic entries from its database as well as all paper documents associated with the electronic entries. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

The Mississippi Justice Information Center is not prohibited from entering the following crimes committed by individuals under 18 years of age into its database: (1) crimes punishable under state or federal law by life imprisonment or death; (2) offenses committed by a child on or after his seventeenth birthday where such offenses would be a felony if committed by an adult; (3) a hunting or fishing violation; (4) a traffic violation; (5) a violation of the Mississippi Implied Consent Law; or (6) a violation of Section 67-3-70. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

A district attorney (as a "person in charge of a law enforcement agency") or circuit court clerk (as an officer of the court) may comply with Section 45-27-9 by providing to the Mississippi Justice Information Center the information on a capias that either cannot or has not been served within a reasonable time period; if for some reason the sheriff cannot serve the capias on the defendant and returns the capias unserved, the information on the capias may be provided to the Mississippi Justice Information Center without violation of Section 97-9-53 or 99-7-15. Kitchens, Jr., April 17, 2000, A.G. Op. #2000-0192.

RESEARCH REFERENCES

ALR. Right of indigent defendant in state criminal case to assistance of fingerprint expert. 72 A.L.R.4th 874.

Am Jur. 21 Am. Jur. 2d, Criminal Law § 542.

21A Am. Jur. 2d, Criminal Law §§ 1217 et seq.

41 Am. Jur. Trials 681, Computer Research for the Trial Lawyer.

§ 45-27-11. Review or challenge of criminal offender records; correction of errors in records.

The center shall make a person's criminal records available for inspection by him or his attorney upon written request. Prior to inspection, the person must submit a set of fingerprints, sign a written authorization for the records check, and provide any other identifying information required by the center. Should such person or his attorney contest the accuracy of any portion of such records, the center shall make available to such person or his attorney a copy of the contested record upon written application identifying the portion of the record contested and showing the reason for the contest of accuracy. Forms, procedures, fees, identification and other related aspects pertinent to such access may be prescribed by the center in making access available.

If an individual believes such information to be inaccurate or incomplete, he may request the original agency having custody or control of the records to purge, modify or supplement them and to so notify the center of such changes. Should the agency decline to so act or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual or his attorney may within thirty (30) days of such decision enter an appeal to the county or circuit court of the county of his residence or to such court in the county where such agency exists. The court in each such case shall conduct a de novo hearing and may order such relief as it finds to be required by law. Such appeals shall be entered in the same manner as other appeals are entered.

Should the record in question be found to be inaccurate or incomplete, the court shall order it to be appropriately expunged, modified or supplemented by an explanatory notation. Each agency or individual in the state with custody, possession or control of any such record shall promptly cause each and every copy thereof in his custody, possession or control to be altered in accordance with the court's order. Notification of each such deletion, amendment and supplementary notation shall be promptly disseminated to any individuals or agencies to which the records in question have been communicated as well as to the individual whose records have been ordered so altered. The center shall not be held liable for the failure to modify, supplement, destroy or expunge records if an agency or court fails to forward to the center proper documentation ordering such action.

Agencies, including the center, at which criminal offender records are sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures, fees or restrictions, including fingerprinting, as are reasonably necessary both to assure the record's security, to verify the identities of those who seek to inspect them and to maintain an orderly and efficient mechanism for such access.

SOURCES: Laws, 1980, ch. 555, § 6; reenacted, Laws, 1983, ch. 381, § 6; Laws, 2001, ch. 500, § 18, eff from and after July 1, 2001.

ATTORNEY GENERAL OPINIONS

The Mississippi Justice Information Act creates a comprehensive scheme for the collection, storage, and dissemination of criminal records, and the information contained in the Mississippi Justice Information Center's database is not subject to release under the Mississippi Public Records Act of 1983. Spann, Oct. 27, 2000, A.G. Op. #2000-0553.

RESEARCH REFERENCES

ALR. Right of exonerated arrestee to have fingerprints, photographs, or other criminal identification or arrest records expunged or restricted. 46 A.L.R.3d 900.

Judicial expunction of criminal record of convicted adult. 11 A.L.R.4th 956.

Am Jur. 41 Am. Jur. Trials 681, Computer Research for the Trial Lawyer.

§ 45-27-12. Dissemination of certain criminal history record information for noncriminal justice purposes.

(1) State conviction information and arrest information which is contained in the center's database or the nonexistence of such information in the center's database shall be made available for the following noncriminal justice purposes:

(a) To any local, state or federal governmental agency that requests the information for the enforcement of a local, state or federal law;

(b) To any individual, nongovernmental entity or any employer authorized either by the subject of record in writing or by state or federal law to receive such information; and

(c) To any federal agency or central repository in another state requesting the information for purposes authorized by law.

(2) Information disseminated for noncriminal justice purposes as specified in this section shall be used only for the purpose for which it was made available and may not be re-disseminated.

(3) No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or organization that would not be eligible to receive the information pursuant to this section.

(4) Upon request for a check pursuant to this section, the nongovernmental entity or employer must provide proper identification and authorization information from the subject of the record to be checked and adhere to policies established by the center for such record checks.

(5) Any individual or his attorney who is the subject of the record to be checked, upon positive verification of the individual's identity, may request to review the disseminated information and shall follow the procedure set forth in Section 45-27-11. If the individual wishes to correct the record as it appears in the center's system, the person shall follow the procedure set forth in Section 45-27-11. The right of a person to review the person's criminal history record information shall not be used by a prospective employer or others as a means to circumvent procedures or fees for accessing records for noncriminal justice purposes.

(6) The center may impose procedures, including the submission of fingerprints, fees or restrictions, as are reasonably necessary to assure the record's security, to verify the identities of those who seek to inspect them, and to maintain an orderly and efficient mechanism for access. All fees shall be assessed and deposited in accordance with the provisions of Section 45-27-8.

(7) Local agencies may release their own agency records according to their own policies.

(8) Release of the above-described information for noncriminal justice purposes shall be made only by the center, under the limitations of this section, and such compiled records will not be released or disclosed for noncriminal justice purposes by other agencies in the state.

SOURCES: Laws, 2001, ch. 500, § 19; Laws, 2006, ch. 347, § 1, eff from and after July 1, 2006.

§ 45-27-13. Penalties.

(1) Any person who knowingly requests, obtains or attempts to obtain criminal history record information and other information maintained in the center's network under false pretenses or who misuses criminal history record information or information maintained in the center's network except in accordance with law or who knowingly communicates or attempts to communicate criminal history record information to any agency or person except in accordance with this chapter, or any member, officer, employee or agent of the center, or any participating agency who knowingly falsifies criminal history record information, or any records relating thereto, shall for each such offense be fined not more than Five Thousand Dollars ($5,000.00) or be imprisoned for not more than one (1) year, or both fined and imprisoned.

(2) Any person who knowingly discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems, except in accordance with this chapter, shall for each such offense be fined not more than Five Thousand Dollars ($5,000.00) or be imprisoned for not more than two (2) years in the custody of the Department of Corrections, or both.

SOURCES: Laws, 1980, ch. 555, § 7; reenacted, Laws, 1983, ch. 381, § 7; Laws, 2001, ch. 500, § 20, eff from and after July 1, 2001.

§ 45-27-15. Provisions to be controlling; juvenile offenders; maintenance and dissemination of more detailed information.

(1) In the event of conflict, this chapter shall to the extent of the conflict supersede all existing statutes which regulate, control or otherwise relate, directly or by implication, to the collection, storage and dissemination or usage of fingerprint identification, offender criminal history or any existing statute which relates directly or by implication to any other provisions of this chapter.

(2) Notwithstanding the provisions of subsection (1) of this section, this chapter shall not be understood to alter, amend or supersede the statutes and rules of law governing the collection, storage, dissemination or usage of records concerning individual juvenile offenders in which they are individually identified by name or other means.

(3) Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the

central repository. However, the dissemination of such criminal history record information is governed by federal statute.

SOURCES: Laws, 1980, ch. 555, § 8; reenacted, Laws, 1983, ch. 381, § 8, eff from and after June 30, 1983.

Cross References — Youth court records of fingerprints of children, see § 43-21-255.

RESEARCH REFERENCES

ALR. What records may be acquired and retained under 28 USCS § 534, directing Attorney General to acquire and preserve criminal identification and other records. 28 A.L.R. Fed. 266.

Am Jur. 21 Am. Jur. 2d, Criminal Law § 542.

21A Am. Jur. 2d, Criminal Law §§ 1217 et seq.

§ 45-27-17. Counties, municipalities and users of network authorized to pay pro rata cost of justice information center.

All boards of supervisors, municipal authorities of the state and other users of the network are hereby authorized to appropriate and pay, in their discretion, to the Department of Public Safety such sum as may be assessed against said county or municipality or user agency as their pro rata cost of the justice information system and Mississippi Justice Information Center.

SOURCES: Laws, 1980, ch. 555, § 10; reenacted, Laws, 1983, ch. 381, § 9; Laws, 2001, ch. 500, § 21, eff from and after July 1, 2001.

§ 45-27-19. Exemption of records.

(1) Unless specifically authorized by law, records maintained by the center shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(2) Intelligence and investigative files maintained by law enforcement shall be kept separate from criminal history record information and shall be exempt from dissemination under the provisions of this chapter and the Mississippi Public Records Law.

SOURCES: Laws, 2001, ch. 500, § 22, eff from and after July 2, 2001.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

§ 45-27-21. Database of all expunction and nonadjudication orders created; accessibility to database.

A certified copy of every expunction and nonadjudication order shall be sent by the circuit clerk to the Mississippi Criminal Information Center where it shall be maintained in a separate confidential database accessible only upon written request by a district attorney, a county prosecuting attorney, a municipal court prosecuting attorney, the Attorney General of Mississippi and the Mississippi Law Enforcement Standards and Training Board. Any criminal conviction which has been expunged or nonadjudicated may be used for the purpose of determining habitual offender status and for the use of the Mississippi Law Enforcement Standards and Training Board in giving or retaining law enforcement certification, and to ensure that a person is only eligible for first-offender status one (1) time.

SOURCES: Laws, 2006, ch. 490, § 1, eff from and after July 1, 2006.

CHAPTER 29

Records

Sec.
45-29-1 and 45-29-3. Repealed.

§§ 45-29-1 and 45-29-3. Repealed.

Repealed by Laws of 2008, ch. 392, § 4, effective July 1, 2008.

§ 45-29-1. [Laws, 1983, ch. 424, § 20, eff from and after July 1, 1983.]

§ 45-29-3. [Laws, 1984, ch. 487; Laws, 1990, ch. 413, § 1; Laws, 2002, ch. 560, § 2, eff from and after passage (approved Apr. 10, 2002.]

Editor's Note — Former § 45-29-1 provided that certain investigative and criminal justice records were exempt from public access requirements. For present similar provisions, see § 25-61-12.

Former § 45-29-3 provided for the exemption from the public records law of certain law enforcement records and personal information of victims. For present similar provisions, see § 25-61-12.

ATTORNEY GENERAL OPINIONS

Where it is determined that release of parts of a report on building security issues would impede a police department's law enforcement efforts, endanger the life or safety of officers or pertain to quality control matters, a city may redact those portions from material which is to be released. Bowman, Aug. 4, 2006, A.G. Op. 06-0217.

CHAPTER 31

Sex Offense Criminal History Record Information Act

Sec.
45-31-1 through 45-31-19. Repealed

§§ 45-31-1 through 45-31-19. Repealed.

Repealed by Laws, 2000, ch. 415, § 8, and ch. 499, § 21, eff from and after July 1, 2000.

§ 45-31-1. [Laws, 1987, ch. 465, § 2, eff from and after July 1, 1987.]

§ 45-31-3. [Laws, 1987, ch. 465, § 3; Laws, 1991, ch. 448, § 2, eff. from and after July 1, 1991.]

§ 45-31-5. [Laws, 1987, ch. 465, § 4, eff from and after July 1, 1987.]

§ 45-31-7. [Laws, 1987, ch. 465, § 5, eff from and after July 1, 1987.]

§ 45-31-9. [Laws, 1987, ch. 465, § 6, eff from and after July 1, 1987.]

§ 45-31-11. [Laws, 1987, ch. 465, § 7, eff from and after July 1, 1987.]

§ 45-31-12. [Laws, 1993, ch. 512, § 1; Laws, 1996, ch. 479, § 2; Laws, 1998, ch. 327, § 1; Laws, 1999, ch. 329, § 6; Laws, 1999, ch. 330, § 1, eff from and after July 1, 1999.]

§ 45-31-13. [Laws, 1987, ch. 465, § 8, eff from and after July 1, 1987.]

§ 45-31-15. [Laws, 1987, ch. 465, § 9, eff from and after July 1, 1987.]

§ 45-31-17. [Laws, 1987, ch. 465, § 10, eff from and after July 1, 1987.]

§ 45-31-19. [Laws, 1987, ch. 465, § 11, eff from and after July 1, 1987.]

Editor's Note — Former §§ 45-31-1 through 45-31-19 comprised the Sex Offense Criminal History Record Information Act. For present similar provisions, see the Mississippi Sex Offenders Registration Law, §§ 45-33-21 et seq.

CHAPTER 33

Registration of Sex Offenders

Sec.

45-33-1 through 45-33-19. Repealed.

45-33-21. Legislative findings and declaration of purpose.

45-33-23. Definitions.

45-33-25. Registration with Mississippi Department of Public Safety of persons convicted of or acquitted by reason of insanity of registrable offenses residing, employed or attending school in Mississippi; registration information; prohibition against registered sex offenders living within specified distance of schools, certain child care facilities or agencies or playgrounds or other recreational facilities utilized by children.

45-33-26. Prohibition against sex offender being present in or within a certain distance of school building or school property or in or about any public beach or public campground where minor children congregate; exemptions; penalties.

45-33-27. Time frame and place for registration of offenders.

45-33-28. Notification of emergency shelter management of person's sex offender status upon entering shelter during declaration of emergency; notification of law enforcement officials of presence of sex offender in shelter.

45-33-29. Address change notification; change in enrollment, employment or vocation status at any educational institution; change of employment or name; change of vehicle information; change of e-mail address or other designation used in Internet communications.

45-33-31. Reregistration.

45-33-32. Disclosure by sex offenders volunteering for organizations serving minors.

45-33-33. Failure to register; reregister or comply with electronic monitoring; violations of chapter; penalties and enforcement.

45-33-34. Notification to the Department of Public Safety regarding reincarceration or commitment of registered sex offender.

45-33-35. Central registry of offenders; duties of agencies to provide information.

45-33-36. Duty of Department of Public Safety to provide sex offender registration information; notification to residents.

45-33-37. DNA identification system; convicted sex offender to submit biological sample for purposes of DNA identification analysis.

45-33-39. Notification to defendant charged with sex offense; notice included on any guilty plea form and judgement and sentence forms.

45-33-41. Notification to inmates and offenders by Department of Corrections, county or municipal jails, and juvenile detention facilities; victim notification.

45-33-43. Written notification to applicants for certain driver's licenses; written acknowledgment by applicant of receipt of notification.

45-33-45. Data monitoring and alert system for certain persons required to be monitored.

45-33-47. Petition for relief from duty to register; grounds; minimum period of continuing registration based on three-tier classification of offenses; certain offenders subject to lifetime registration; certain offenders subject to electronic monitoring.

45-33-49. Disclosure to public; guidelines for sheriffs as to notification; certain registry information to be available online; participation in Dru Sjodin National Sex Offender Public website; notification of schools and day care centers.

45-33-51. Misuse of information; penalties.
45-33-53. Immunity from civil liability; immunity for exercise of discretion under chapter.
45-33-55. Exemptions for expunction.
45-33-57. Fees.
45-33-59. Sex offenders employed in positions of close contact with children required to notify employers in writing of sex offender status.
45-33-61. Access to Administrative Office of Courts' youth court data management system by sex offenders prohibited.

§§ 45-33-1 through 45-33-19. Repealed.

Repealed by Laws, 2000, ch. 499, § 20, eff from and after July 1, 2000.

§ 45-33-1. [Laws, 1994, ch. 514, § 1; Laws, 1995, ch. 595, § 1; Laws, 1997, ch. 454, § 1; Laws, 1998, ch. 358, § 1, eff from and after passage (approved March 16, 1998).]

§ 45-33-3. [Laws, 1994, ch. 514, § 2; Laws, 1995, ch. 595, § 2; Laws, 1997, ch. 454, § 2, eff from and after passage (approved March 25, 1997).]

§ 45-33-5. [Laws, 1994, ch. 514, § 3; Laws, 1995, ch. 595, § 3; Laws, 1997, ch. 454, § 3; Laws, 1998, ch. 358, § 2, eff from and after passage (approved March 16, 1998).]

§ 45-33-7. [Laws, 1994, ch. 514, § 4; Laws, 1995, ch. 595, § 4; Laws, 1996, ch. 325, § 1, eff from and after passage (approved March 17, 1996).]

§ 45-33-9. [Laws, 1994, ch. 514, § 5; Laws, 1995, ch. 595, § 5; Laws, 1997, ch. 454, § 4, eff from and after passage (approved March 25, 1997).]

§ 45-33-11. [Laws, 1994, ch. 514, § 6, eff from and after July 1, 1994.]

§ 45-33-13. [Laws, 1994, ch. 514, § 7; Laws, 1995, ch. 595, § 6; Laws, 1997, ch. 454, § 5; Laws, 1998, ch. 358, § 3, eff from and after passage (approved March 16, 1998).]

§ 45-33-15. [Laws, 1994, ch. 514, § 8; Laws, 1995, ch. 595, § 7, eff from and after July 1, 1995.]

§ 45-33-17. [Laws, 1995, ch. 595, § 8; Laws, 1998, ch. 358, § 4, eff from and after passage (approved March 16, 1998).]

§ 45-33-19. [Laws, 1995, ch. 595, § 9; Laws, 1997, ch. 454, § 6, eff from and after passage (approved March 25, 1997).]

Editor's Note — Former § 45-33-1 related to sex offender registration requirements, process and penalties.

Former § 45-33-3 related to the central registry of sex offenders in the Department of Safety and the duties of those registering offenders.

Former § 45-33-5 related to notification requirements to those charged with the commission of sex offenses and persons acquitted by reason of insanity.

Former § 45-33-7 related to written notifications and acknowledgements upon confinement and release of offenders.

Former § 45-33-9 related to written notifications and acknowledgements to inmates and offenders by jails and juvenile detention facilities.

Former § 45-33-11 related to written information on registration requirements to be given to applicants for driver's licenses.

Former § 45-33-13 related to the procedure for obtaining relief from the duty to register.

Former § 45-33-15 related to a system for DNA identification.

Former § 45-33-17 related to the release of information, and immunity from related liability.

Former § 45-33-19 related to immunity for providing or failing to provide information concerning procedures applying to sex offenders and the prohibition against the release of victim identities.

§ 45-33-21. Legislative findings and declaration of purpose.

The Legislature finds that the danger of recidivism posed by criminal sex offenders and the protection of the public from these offenders is of paramount concern and interest to government. The Legislature further finds that law enforcement agencies' efforts to protect their communities, conduct investigations, and quickly apprehend criminal sex offenders are impaired by the lack of information shared with the public, which lack of information may result in the failure of the criminal justice system to identify, investigate, apprehend, and prosecute criminal sex offenders.

The Legislature further finds that the system of registering criminal sex offenders is a proper exercise of the state's police power regulating present and ongoing conduct. Comprehensive registration and periodic address verification will provide law enforcement with additional information critical to preventing sexual victimization and to resolving promptly incidents involving sexual abuse and exploitation. It will allow law enforcement agencies to alert the public when necessary for the continued protection of the community.

Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in safety and in the effective operation of government. In balancing offenders' due process and other rights, and the interests of public security, the Legislature finds that releasing such information about criminal sex offenders to the general public will further the primary governmental interest of protecting vulnerable populations and, in some instances the public, from potential harm.

Therefore, the state's policy is to assist local law enforcement agencies' efforts to protect their communities by requiring criminal sex offenders to register, to record their addresses of residence, to be photographed and fingerprinted, and to authorize the release of necessary and relevant information about criminal sex offenders to the public as provided in this chapter, which may be referred to as the Mississippi Sex Offenders Registration Law.

SOURCES: Laws, 2000, ch. 499, § 1, eff from and after July 1, 2000.

Cross References — Criminal history record checks and fingerprinting for healthcare professional/vocational technical students, see § 37-29-232.

Criminal history record checks and fingerprinting required for new employees providing direct patient care at University of Mississippi Medical Center, see § 37-115-41.

Restrictions on employment by or operation of child care facilities by registered sex offenders, see §§ 43-15-301 et seq.

ATTORNEY GENERAL OPINIONS

As long as the provisions of a municipal ordinance requiring the registration of sex offenders supplement, and do not conflict, with the provisions of Section 45-33-21, a municipality is within the authority granted it by Section 21-17-5 to enact such an ordinance. Gibson, Apr. 21, 2006, A.G. Op. 05-0382.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Initial Classification Determination. 65 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims for Downward Departure. 66 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1

§ 45-33-23. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Conviction" means that, regarding the person's offense, there has been a determination or judgment of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere regardless of whether adjudication is withheld. "Conviction of similar offenses" includes, but is not limited to, a conviction by a federal or military tribunal, including a court-martial conducted by the Armed Forces of the United States, a conviction for an offense committed on an Indian Reservation or other federal property, a conviction in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianna Islands or the United States Virgin Islands, and a conviction in a foreign country if the foreign country's judicial system is such that it satisfies minimum due process set forth in the guidelines under Section 111(5)(B) Public Law 109-248.

(b) "Department" means the Mississippi Department of Public Safety unless otherwise specified.

(c) "Jurisdiction" means any court or locality including any state court, federal court, military court, Indian tribunal or foreign court, the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianna Islands or the United States Virgin Islands, and Indian tribes that elect to function as registration jurisdictions under Title 1, SORNA Section 127 of the Adam Walsh Child Safety Act.

(d) "Permanent residence" means a place where the person abides, lodges, or resides for a period of fourteen (14) or more consecutive days.

(e) "Registration" means providing information to the appropriate agency within the time frame specified as required by this chapter.

(f) "Registration duties" means obtaining the registration information required on the form specified by the department as well as the photograph, fingerprints and biological sample of the registrant. Biological samples are to be forwarded to the Mississippi Forensics Laboratory pursuant to Section 45-33-37; the photograph, fingerprints and other registration information are to be forwarded to the Department of Public Safety immediately.

(g) "Responsible agency" is defined as the person or government entity whose duty it is to obtain information from a criminal sex offender upon conviction and to transmit that information to the Mississippi Department of Public Safety.

(i) For a criminal sex offender being released from the custody of the Department of Corrections, the responsible agency is the Department of Corrections.

(ii) For a criminal sex offender being released from a county jail, the responsible agency is the sheriff of that county.

(iii) For a criminal sex offender being released from a municipal jail, the responsible agency is the police department of that municipality.

(iv) For a sex offender in the custody of the youth court, the responsible agency is the youth court.

(v) For a criminal sex offender who is being placed on probation, including conditional discharge or unconditional discharge, without any sentence of incarceration, the responsible agency is the sentencing court.

(vi) For an offender who has been committed to a mental institution following an acquittal by reason of insanity, the responsible agency is the facility from which the offender is released. Specifically, the director of the facility shall notify the Department of Public Safety before the offender's release.

(vii) For a criminal sex offender who is being released from a jurisdiction outside this state or who has a prior conviction in another jurisdiction and who is to reside, work or attend school in this state, the responsible agency is both the sheriff of the proposed county of residence and the department.

(h) "Sex offense" or "registrable offense" means any of the following offenses:

(i) Section 97-3-53 relating to kidnapping, if the victim was below the age of eighteen (18);

(ii) Section 97-3-65 relating to rape; however, conviction or adjudication under Section 97-3-65(1)(a) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;

(iii) Section 97-3-71 relating to rape and assault with intent to ravish;

(iv) Section 97-3-95 relating to sexual battery; however, conviction or adjudication under Section 97-3-95(1)(c) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;

(v) Section 97-5-5 relating to enticing a child for concealment, prostitution or marriage;

(vi) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;

(vii) Section 97-5-27 relating to the dissemination of sexually oriented material to children;

(viii) Section 97-5-33 relating to the exploitation of children;

(ix) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;

(x) Section 97-29-3 relating to sexual intercourse between teacher and student;

(xi) Section 97-29-59 relating to unnatural intercourse;

(xii) Section 43-47-18 relating to sexual abuse of a vulnerable person;

(xiii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor and Section 97-3-54.3 relating to aiding, abetting or conspiring to violate Section 97-3-54.1(1)(c);

(xiv) Section 97-29-61(2) relating to voyeurism when the victim is a child under sixteen (16) years of age;

(xv) Section 97-29-63 relating to filming another without permission where there is an expectation of privacy;

(xvi) Section 97-29-45(1)(a) relating to obscene electronic communication;

(xvii) Section 97-3-104 relating to the crime of sexual activity between law enforcement, correctional or custodial personnel and prisoners;

(xviii) Section 97-5-39(1)(e) relating to contributing to the neglect or delinquency of a child, felonious abuse or battery of a child, if the victim was sexually abused;

(xix) Section 97-1-7 relating to attempt to commit any of the above-referenced offenses;

(xx) Any other offense resulting in a conviction in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere;

(xxi) Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had;

(xxii) Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this section;

(xxiii) Capital murder when one (1) of the above-described offenses is the underlying crime.

(i) "Temporary residence" is defined as any place where the person abides, lodges, or resides for a period of seven (7) or more consecutive days which is not the person's permanent residence.

SOURCES: Laws, 2000, ch. 499, § 2; Laws, 2001, ch. 500, § 1; Laws, 2006, ch. 328, § 3; Laws, 2006, ch. 563, § 1; Laws, 2006, ch. 583, § 7; Laws, 2007, ch. 392, § 1; Laws, 2009, ch. 411, § 1; Laws, 2011, ch. 359, § 1; Laws, 2012, ch. 557, § 3; Laws, 2013, ch. 521, § 1; Laws, 2015, ch. 452, § 9, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 3 of ch. 328, Laws of 2006, effective from and after July 1, 2006 (approved March 9, 2006), amended this section. Section 1 of ch. 563, Laws of 2006, effective from and after July 1, 2006 (approved April 24, 2006), also amended this section. Section 7 of ch. 583, Laws of 2006, effective July 1, 2006 (approved April 21, 2006), also amended this section. As set out above, this section reflects the language of Section 7 of ch. 583, Laws of 2006, pursuant to its own terms, which contain language that specifically provides that it supersedes the amendments made by ch. 328, § 3, and ch. 563, § 1.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (h)(xviii) by substituting "Section 97-5-39(1)(e)" for "Section 97-5-39(1)(c)." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

Amendment Notes — The 2015 amendment substituted "Mississippi Forensics Laboratory" for "State Crime Laboratory" in (f).

Federal Aspects — The Adam Walsh Child Protection and Safety Act, see 42 USCS §§ 16901 et seq.

JUDICIAL DECISIONS

1. Registrable offense.
2. Expungement of conviction.

1. Registrable offense.

Circuit court did not err in denying defendant's petition for relief from registrations as a sex offender because defendant did not meet the exemption to the registration requirement set forth in subsection (h)(ii); defendant's crime of statutory rape constituted a registrable offense, subject to the registration requirements. Williams v. State, — So. 3d —, 2015 Miss. App. LEXIS 197 (Miss. Ct. App. Apr. 14, 2015).

Defendant failed to provide any evidence or argument to support his claim that he was not required to register in the State of California, and the record lacked any indication that defendant had received a certificate of rehabilitation in California. Based on the record before the Supreme Court, defendant's conviction was a registrable offense. Witten v. State Ex Rel. Miss. Dep't of Pub. Safety, — So. 3d —, 2014 Miss. LEXIS 308 (Miss. June 26, 2014).

2. Expungement of conviction.

Expungement of a misdemeanor, fourth-degree, sexual-offense conviction in Maryland by the court that entered the conviction entitled defendant to relief from his duty to register as a sex offender in Mississippi because, at the moment defendant's Maryland conviction was expunged, the law provided that he was restored to the status he had occupied before he was convicted, which meant that — in the eyes of the law — he had no conviction for a registrable sexual offense, and, without such conviction, he had no duty to register as a sex offender. Stallworth v. State, — So. 3d —, 2015 Miss. LEXIS 171 (Miss. Apr. 16, 2015).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statute Including "Sexually Motivated Offenses" Within Definition of Sex Offense for Purposes of Sentencing or Classification of Defendant as Sex Offender. 30 A.L.R.6th 373.

ATTORNEY GENERAL OPINIONS

A violation of § 99-29-63, which prohibits photographing or filming another without permission where there is an expectation of privacy, is not a "sex crime" for the purpose of determining eligibility for parole or the intensive supervision program. Johnson, June 14, 2002, A.G. Op. #02-0336.

§ 45-33-25. Registration with Mississippi Department of Public Safety of persons convicted of or acquitted by reason of insanity of registrable offenses residing, employed or attending school in Mississippi; registration information; prohibition against registered sex offenders living within specified distance of schools, certain child care facilities or agencies or playgrounds or other recreational facilities utilized by children.

(1)(a) Any person having a permanent or temporary residence in this state or who is employed or attending school in this state who has been convicted of a registrable offense in this state or another jurisdiction or who has been acquitted by reason of insanity of a registrable offense in this state or another jurisdiction shall register with the responsible agency and the Mississippi Department of Public Safety. Registration shall not be required for an offense that is not a registrable sex offense or for an offender who is under fourteen (14) years of age. The department shall provide the initial registration information as well as every change of name, change of address, change of status at a school, or other change of information as required by the department to the sheriff of the county of the residence address of the registrant, the sheriff of the county of the employment address, and the sheriff of the county of the school address, if applicable, and any other jurisdiction of the registrant through either written notice, electronic or telephone transmissions, or online access to registration information. Further, the department shall provide this information to the Federal Bureau of Investigation. Additionally, upon notification by the registrant that he intends to reside outside the State of Mississippi, the department shall notify the appropriate state law enforcement agency of any state to which a registrant is moving or has moved.

(b) Any person having a permanent or temporary residence or who is employed or attending school in this state who has been adjudicated delinquent for a registrable sex offense listed in this paragraph that involved use of force against the victim shall register as a sex offender with the responsible agency and shall personally appear at a Mississippi Department of Public Safety Driver's License Station within three (3) business days of registering with the responsible agency:

(i) Section 97-3-71 relating to rape and assault with intent to ravish;

(ii) Section 97-3-95 relating to sexual battery;

(iii) Section 97-3-65 relating to statutory rape; or

(iv) Conspiracy to commit, accessory to the commission of, or attempt to commit any offense listed in this paragraph.

(2) Any person required to register under this chapter shall submit the following information at the time of registration:

(a) Name, including a former name which has been legally changed;

(b) Street address of all current permanent and temporary residences within state or out of state at which the sex offender resides or habitually lives, including dates of temporary lodgings. There is a presumption that a registrant owes a duty of updating registration information if:

(i) The registrant remains away from a registered address for seven (7) or more consecutive days; or

(ii) If the registrant remains at another address between the hours of 10:00 p.m. and 6:00 a.m. for more than seven (7) consecutive days;

(c) Date, place and address of employment, including as a volunteer or unpaid intern or as a transient or day laborer;

(d) Crime for which charged, arrested or convicted;

(e) Date and place of conviction, adjudication or acquittal by reason of insanity;

(f) Aliases used or nicknames, ethnic or tribal names by which commonly known;

(g) Social security number and any purported social security number or numbers;

(h) Date and place of birth and any purported date and place of birth;

(i) Age, race, sex, height, weight, hair and eye colors, and any other physical description or identifying factors;

(j) A brief description of the offense or offenses for which the registration is required;

(k) Driver's license or state or other jurisdiction identification card number, which license or card may be electronically accessed by the Department of Public Safety;

(*l*) Anticipated future residence;

(m) If the registrant's residence is a motor vehicle, trailer, mobile home or manufactured home, the registrant shall also provide vehicle identification number, license tag number, registration number and a description, including color scheme, of the motor vehicle, trailer, mobile home or manufactured home; if the registrant's place of residence is a vessel or houseboat, the registrant shall also provide the hull identification number, manufacturer's serial number, name of the vessel or houseboat, registration number and a description, including color scheme, of the vessel or houseboat, including permanent or frequent locations where the motor vehicle, trailer, mobile home, manufactured home, vessel or houseboat is kept;

(n) Vehicle make, model, color and license tag number for all vehicles owned or operated by the sex offender, whether for work or personal use, and the permanent or frequent locations where a vehicle is kept;

(o) Offense history;

(p) Photograph;

(q) Fingerprints and palm prints;

(r) Documentation of any treatment received for any mental abnormality or personality disorder of the person;

(s) Biological sample;

(t) Name of any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education at which the offender is employed, carries on a vocation (with or without compensation) or is enrolled as a student, or will be enrolled as a student, and the registrant's status;

(u) Copy of conviction or sentencing order for the sex offense for which registration is required;

(v) The offender's parole, probation or supervised release status and the existence of any outstanding arrest warrants;

(w) Every online identity, screen name or username used, registered or created by a registrant;

(x) Professional licensing information which authorizes the registrant to engage in an occupation or carry out a trade or occupation;

(y) Information from passport and immigration documents;

(z) All telephone numbers, including, but not limited to, permanent residence, temporary residence, cell phone and employment phone numbers, whether landlines or cell phones; and

(aa) Any other information deemed necessary.

(3) For purposes of this chapter, a person is considered to be residing in this state if he maintains a permanent or temporary residence as defined in Section 45-33-23, including students, temporary employees and military personnel on assignment.

(4)(a) A person required to register under this chapter shall not reside within three thousand (3,000) feet of the real property comprising a public or nonpublic elementary or secondary school, a child care facility, a residential child-caring agency, a children's group care home or any playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years.

(b) A person residing within three thousand (3,000) feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility does not commit a violation of this subsection if any of the following apply:

(i) The person is serving a sentence at a jail, prison, juvenile facility or other correctional institution or facility.

(ii) The person is subject to an order of commitment under Title 41, Mississippi Code of 1972.

(iii) The person established the subject residence before July 1, 2006.

(iv) The school or child care facility is established within three thousand (3,000) feet of the person's residence subsequent to the date the person established residency.

(v) The person established the subject residence between July 1, 2006, and January 1, 2014, in a location at least one thousand five hundred (1,500) feet from the school or child care facility.

(vi) The person is a minor or a ward under a guardianship.

(c) A person residing within three thousand (3,000) feet of the real property comprising a residential child-caring agency, a children's group care home or any playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years does not commit a violation of this subsection if any of the following apply:

(i) The person established the subject residence before July 1, 2008.

(ii) The residential child-caring agency, children's group care home, playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years is established within three thousand (3,000) feet of the person's residence subsequent to the date the person established residency.

(iii) The person established the subject residence between July 1, 2008, and January 1, 2014, in a location at least one thousand five hundred (1,500) feet from the residential child-caring agency, children's group care home, playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years.

(iv) Any of the conditions described in subsection (4)(b)(i), (ii) or (vi) exist.

(5) The Department of Public Safety is required to obtain the text of the law defining the offense or offenses for which the registration is required.

SOURCES: Laws, 2000, ch. 499, § 3; Laws, 2001, ch. 500, § 2; Laws, 2006, ch. 566, § 2; Laws, 2007, ch. 392, § 2; Laws, 2008, ch. 424, § 1; Laws, 2011, ch. 359, § 2; Laws, 2013, ch. 521, § 2, eff from and after Jan. 1, 2014.

Editor's Note — Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

Cross References — Commitment under Title 41, Mississippi Code of 1972, see §§ 41-21-61 et seq.

Prohibition against sex offender being present in or within a certain distance of a school building or school property, see § 45-33-26.

Registered sex offender's identification card to identify cardholder as sex offender, see § 45-35-3.

JUDICIAL DECISIONS

1. Constitutionality.
2. Resident.
3. Registrable offenses.
4. Guilty pleas.

1. Constitutionality.

Court of appeals declined to find that the sex-offender-registration statutory scheme violated the Ex Post Facto Clause because there was no intervening decision by either the United States Supreme Court or Mississippi Supreme Court. Williams v. State, — So. 3d —, 2015 Miss. App. LEXIS 197 (Miss. Ct. App. Apr. 14, 2015).

2. Resident.

Defendant's motion for a directed verdict was denied in a case involving a failure to register as a sex offender under Miss. Code Ann. § 45-33-25 because the state proved that defendant was a resident of Mississippi where a friend testified that defendant had lived beside the defendant for six to nine months, and saw defendant on a regular basis. Potts v.

State, 955 So. 2d 913 (Miss. Ct. App. 2007).

3. Registrable offenses.

Offender was required to continue registering as a sex offender under Miss. Code Ann. § 45-33-47 due to his guilty plea to a Maryland sex offense because: (1) the offender admitted in his plea that he had placed his hands on the victim's vagina without her consent; and (2) his conduct and plea satisfied the elements of the Mississippi crime of attempted sexual battery, which was a registrable offense in Mississippi. Stallworth v. Miss. Dep't of Pub. Safety, 986 So. 2d 259 (Miss. 2008).

Neither the record nor the trial court's order substantiated the petitioner's statement that the sentencing judge ordered that he did not have to comply with sex offender registration, Miss. Code Ann. § 45-33-25. Payton v. State, 845 So. 2d 713 (Miss. Ct. App. 2003), writ of certiorari denied by 859 So. 2d 392, 2003 Miss. LEXIS 436 (Miss. 2003), writ of certiorari denied by 540 U.S. 1078, 124 S. Ct. 931, 157 L. Ed. 2d 751, 2003 U.S. LEXIS 9076, 72 U.S.L.W. 3392 (2003).

4. Guilty pleas.

Trial judge is not required, prior to accepting a guilty plea, to inform a defendant of the sex offender registration laws, Miss. Code Ann. §§ 45-33-25 through 45-33-31 because Miss. Code Ann. § 45-33-39(1) confers no right on a criminal defendant charged with a sex crime and imposes no duty on trial judges, and since the requirement to register as a sex offender is a collateral consequence of a guilty plea, the trial court will not be put in error for failing to advise a defendant of the registration requirements before accepting his guilty plea; the Mississippi legislative branch of government may not, through procedural legislation, control the function of the judiciary, and subservience to legislation that mandates what trial judges must say to a defendant in a courtroom during a plea hearing would be tantamount to both an abdication of judicial duty, as well as tacit approval of legislative usurpation of the judicial prerogative. Magyar v. State, 18 So. 3d 807 (Miss. 2009), writ of certiorari denied by 560 U.S. 903, 130 S. Ct. 3274, 176 L. Ed. 2d 1182, 2010 U.S. LEXIS 3999, 78 U.S.L.W. 3667 (2010).

That defendant was not informed of the fact that he would have to register as a sex offender under Miss. Code Ann. § 45-33-25(1) prior to entering his guilty plea did not equate to a failure to advise defendant of the maximum or minimum penalty of the crime of sexual assault or to a waiver of his rights because the registration requirement was merely a collateral, rather than punitive, consequence of his guilty plea. Magyar v. State, 18 So. 3d 851 (Miss. Ct. App. 2008), affirmed by 18 So. 3d 807, 2009 Miss. LEXIS 388 (Miss. 2009).

ATTORNEY GENERAL OPINIONS

In the event the Department of Public Safety discovers an offender in violation of the registration requirement, the violation should be reported to the jurisdiction in which the individual resided when the failure to make the appropriate report occurred [opinion under prior law]. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

RESEARCH REFERENCES

ALR. Statutes or ordinances requiring persons previously convicted of crime to register with designated officials. 82 A.L.R.2d 398.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities. 36 A.L.R.5th 161.

Validity, Construction, and Application of State Statute Including "Sexually Motivated Offenses" Within Definition of Sex Offense for Purposes of Sentencing or Classification of Defendant as Sex Offender. 30 A.L.R.6th 373.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Initial Classification Determination. 65 A.L.R.6th 1

Validity, Construction, and Application

of State Sex Offender Registration Statutes Concerning Level of Classification — Claims for Downward Departure. 66 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1

§ 45-33-26. Prohibition against sex offender being present in or within a certain distance of school building or school property or in or about any public beach or public campground where minor children congregate; exemptions; penalties.

(1)(a) Unless exempted under subsection (2), it is unlawful for a person required to register as a sex offender under Section 45-33-25:

(i) To be present in any school building, on real property comprising any school, or in any conveyance owned, leased or contracted by a school to transport students to or from school or a school-related activity when persons under the age of eighteen (18) are present in the building, on the grounds or in the conveyance; or

(ii) To loiter within five hundred (500) feet of a school building or real property comprising any school while persons under the age of eighteen (18) are present in the building or on the grounds.

(b) It is unlawful for a person required to register as a sex offender under Section 45-33-25 to visit or be in or about any public beach or public campground where minor children congregate without advance approval from the Director of the Department of Public Safety Sex Offender Registry, and the registrant is required to immediately report any incidental contact with minor children to the director.

(2)(a) A person required to register as a sex offender who is a parent or guardian of a student attending the school and who complies with subsection (3) may be present on school property if the parent or guardian is:

(i) Attending a conference at the school with school personnel to discuss the progress of the sex offender's child academically or socially;

(ii) Participating in child review conferences in which evaluation and placement decisions may be made with respect to the sex offender's child regarding special education services;

(iii) Attending conferences to discuss other student issues concerning the sex offender's child such as retention and promotion;

(iv) Transporting the sex offender's child to and from school; or

(v) Present at the school because the presence of the sex offender has been requested by the principal for any other reason relating to the welfare of the child.

(b) Subsection (1) of this section shall not apply to a sex offender who is legally enrolled in a particular school or is participating in a school-sponsored educational program located at a particular school when the sex offender is present at that school.

(3)(a) In order to exercise the exemption under subsection (2), a parent or guardian who is required to register as a sex offender must notify the principal of the school of the sex offender's presence at the school unless the offender: (i) has permission to be present from the superintendent or the school board, or (ii) the principal has granted ongoing permission for regular visits of a routine nature.

(b) If permission is granted by the superintendent or the school board, the superintendent or school board president must inform the principal of the school where the sex offender will be present. Notification includes the nature of the sex offender's visit and the hours when the sex offender will be present in the school, and the sex offender is responsible for notifying the principal's office upon arrival and upon departure. If the sex offender is to be present in the vicinity of children, the sex offender has the duty to remain under the direct supervision of a school official.

(4) For the purposes of this section, the following terms shall have the meanings ascribed unless the context clearly requires otherwise:

(a) "School" means a public or private preschool, elementary school or secondary school.

(b) "Loiter" means standing or sitting idly, whether in or out of a vehicle, or remaining in or around school property without a legitimate reason.

(c) "School official" means the principal, a teacher, any other certified employee of the school, the superintendent of schools, or a member of the school board.

(5) A sex offender who violates this section is guilty of a misdemeanor and subject to a fine not to exceed One Thousand Dollars ($1,000.00), incarceration not to exceed six (6) months in jail, or both.

(6) It is a defense to prosecution under this section that the sex offender did not know and could not reasonably know that the property or conveyance fell within the proscription of this section.

(7) Nothing in this section shall be construed to infringe upon the constitutional right of a sex offender to be present in a school building that is used as a polling place for the purpose of voting.

SOURCES: Laws, 2007, ch. 595, § 1; Laws, 2012, ch. 410, § 3, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 410, § 4 provides:

"SECTION 4. Sections 1 and 2 of this act shall take effect and be in force from and after its passage [April 18, 2012], and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Validity of Statutes Imposing Residency Restrictions on Registered Sex Offenders. 25 A.L.R. 6th 227.

§ 45-33-27. Time frame and place for registration of offenders.

(1) A person required to register on the basis of a conviction, adjudication of delinquency or acquittal by reason of insanity entered shall register with the responsible agency within three (3) business days of the date of judgment unless the person is immediately confined or committed, in which case the person shall register before release in accordance with the procedures established by the department. The responsible agency shall immediately forward the registration information to the Department of Public Safety. The person is also required to personally appear at a Department of Public Safety Driver's License Station within three (3) days of registration with the responsible agency and to obtain a sex offender registration card.

(2) If a person who is required to register under this section is released from prison or placed on parole or supervised release or in a restitution center or community work center, the Department of Corrections shall perform the registration duties before placement in a center or before release and immediately forward the registration information to the Department of Public Safety. The person is also required to personally appear at a Department of Public Safety Driver's License Station within three (3) days of release or placement in a restitution center or community work center.

(3) If a person required to register under this section is placed on probation, the court, at the time of entering the order, shall register the person and immediately forward the registration information to the Department of Public Safety. The person is also required to personally appear at a Department of Public Safety Driver's License Station within three (3) days of the entry of the order.

(4) Any person required to register who is neither incarcerated, detained nor committed at the time the requirement to register attaches shall present himself to the county sheriff to register within three (3) business days, and shall personally appear at a Department of Public Safety Driver's License Station within three (3) days of the time the requirement to register attaches.

(5) An offender moving to or returning to this state from another jurisdiction shall notify the Department of Public Safety ten (10) days before the person first resides in or returns to this state and shall present himself to the sheriff of the county of his residence within three (3) business days after first residing in or returning to a county of this state to provide the required registration information. The person is also required to register by personally appearing at a Department of Public Safety Driver's License Station within three (3) days after first residing in or moving to a county of this state. If the offender fails to appear for registration as required in this state, the department shall notify the other jurisdiction of the failure to register.

(6) A person, other than a person confined in a correctional or juvenile detention facility or involuntarily committed on the basis of mental illness, who is required to register on the basis of a sex offense for which a conviction, adjudication of delinquency or acquittal by reason of insanity was entered shall register with the sheriff of the county in which he resides no later than August 15, 2000, or within three (3) business days of first residing in or returning to a county of this state.

(7) Every person required to register shall show proof of domicile. The commissioner shall promulgate any rules and regulations necessary to enforce this requirement and shall prescribe the means by which such person may show domicile.

(8) Any driver's license photograph, I.D. photograph, sex offender photograph, fingerprint, driver's license application and/or anything submitted to the Department of Public Safety by a known convicted sex offender, registered or not registered, can be used by the Department of Public Safety or any other authorized law enforcement agency for any means necessary in registration, identification, investigation regarding their tracking or identification.

(9) The department will assist local law enforcement agencies in the effort to conduct address and other verifications of registered sex offenders and will assist in the location and apprehension of noncompliant sex offenders.

SOURCES: Laws, 2000, ch. 499, § 4; Laws, 2001, ch. 500, § 3; Laws, 2005, ch. 353, § 1; Laws, 2006, ch. 563, § 2; Laws, 2007, ch. 392, § 3; Laws, 2011, ch. 359, § 3, eff from and after July 1, 2011.

JUDICIAL DECISIONS

1. Jury instruction as to notice.

Since the issue of whether a defendant had actual or probable knowledge of the duty to register as a sex offender was a factual issue for the jury to decide, the trial court erred in refusing the defendant's request for jury instruction requiring notice. Garrison v. State, 950 So. 2d 990 (Miss. 2006).

§ 45-33-28. Notification of emergency shelter management of person's sex offender status upon entering shelter during declaration of emergency; notification of law enforcement officials of presence of sex offender in shelter.

(1) Notwithstanding any other provision of the law to the contrary, during a declaration of emergency, any person who has been required to register as a sex offender as provided in this chapter who enters an emergency shelter, within the first twenty-four (24) hours of admittance, shall notify the management of the facility, the sheriff of the county in which the shelter is located and the chief of police of the municipality, if the shelter is located in a municipality, of the person's sex offender status. The sex offender shall provide his full name, date of birth, social security number, and last address of registration prior to the declaration of emergency. Within seventy-two (72) hours of receiving the

notification required by the provisions of this subsection, the sheriff and chief of police shall forward that information to the department.

(2) The manager or director of the emergency shelter shall make a reasonable effort to notify the chief law enforcement officer of the county or municipality in which the shelter is located of the presence of the sex offender in the emergency shelter. No person associated with a nonprofit organization that operates an emergency shelter shall be liable for any injury or claim arising out of the failure of the manager or operator to communicate the presence of a sex offender in the shelter to the appropriate law enforcement official.

SOURCES: Laws, 2011, ch. 359, § 4, eff from and after July 1, 2011.

§ 45-33-29. Address change notification; change in enrollment, employment or vocation status at any educational institution; change of employment or name; change of vehicle information; change of e-mail address or other designation used in Internet communications.

(1) Upon any change of address, including temporary lodging, an offender required to register under this chapter is required to personally appear at a Department of Public Safety Driver's License Station not less than ten (10) days before he intends to first reside at the new address.

(2) Upon any change in the status of a registrant's enrollment, employment or vocation at any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education, the offender is required to personally appear at a Department of Public Safety Driver's License Station within three (3) business days of the change.

(3) Upon any change of employment or change of name, a registrant is required to personally appear at a Department of Public Safety Driver's License Station within three (3) business days of the change.

(4) Upon any change of vehicle information, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

(5) Upon any change of e-mail address or addresses, instant message address or addresses, or any other designation used in Internet communications, postings or telephone communications, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

(6) Upon any change of information deemed by the department to be necessary to the state's policy to assist local law enforcement agencies' efforts to protect their communities, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

SOURCES: Laws, 2000, ch. 499, § 5; Laws, 2001, ch. 500, § 4; Laws, 2005, ch. 353, § 2; Laws, 2006, ch. 563, § 3; Laws, 2007, ch. 392, § 4; Laws, 2011, ch. 359, § 5, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2), as added by Laws of 2001, ch. 500. The phrase "the status of a registrant, employment or vocation" was changed to "the status of a registrant's employment or vocation." The Joint Committee ratified the correction at its April 26, 2001, meeting.

§ 45-33-31. Reregistration.

(1)(a) Registrants who are in compliance with a program of electronic monitoring under this chapter are required to reregister annually.

(b) All other registrants are required to personally appear at a Department of Public Safety Driver's License Station to reregister every ninety (90) days.

(2) Reregistration includes the submission of current information and photograph to the department and the verification of registration information, including the street address and telephone number of the registrant; name, street address and telephone number of the registrant's employment or status at a school, along with any other registration information that may need to be verified and the payment of any required fees.

(3) A person who fails to reregister and obtain a renewal sex offender registration card as required by this section commits a violation of this chapter. The Department of Public Safety will immediately notify any sheriff or other jurisdiction of any changes in information including residence address, employment and status at a school if that jurisdiction, county or municipality is affected by the change.

SOURCES: Laws, 2000, ch. 499, § 6; Laws, 2001, ch. 500, § 5; Laws, 2005, ch. 353, § 3; Laws, 2006, ch. 563, § 4; Laws, 2007, ch. 392, § 5; Laws, 2011, ch. 359, § 6; Laws, 2013, ch. 521, § 5, eff from and after Jan. 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first paragraph. The phrase "street address and telephone number of the registrant; employment" was changed to "street address and telephone number of the registrant's employment." The Joint Committee ratified the correction at its April 26, 2001, meeting.

Editor's Note — Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

§ 45-33-32. Disclosure by sex offenders volunteering for organizations serving minors.

(1) A person convicted of a sex offense who volunteers for an organization in which volunteers have direct, private and unsupervised contact with minors shall notify the organization of the person's conviction at the time of volunteering. Such notification must be in writing to the organization. Any organization which accepts volunteers must notify volunteers of this disclosure requirement upon application of the volunteer to serve or prior to acceptance of any of the volunteer's service, whichever occurs first.

(2) If the organization, after notification by the offender as provided in subsection (1), accepts the offender as a volunteer, the organization must notify the parents or guardians of any minors involved in the organization of the offender's criminal record.

(3) This section applies to all registered sex offenders regardless of the date of conviction.

(4) Any person previously registered as a sex offender and who has a continuing obligation to be registered as a sex offender shall be notified of the person's duty under this section with the first reregistration form to be sent to the person after July 1, 2004.

(5) If the registered sex offender is currently volunteering for such an organization, the sex offender must resign or notify the organization immediately upon receipt of notice or be subject to the penalties of this chapter.

SOURCES: Laws, 2004, ch. 493, § 1, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in (3) by inserting "[Laws, 2004, ch. 493]" following "This act." The Joint Committee ratified the correction at its June 29, 2005, meeting.

§ 45-33-33. Failure to register; reregister or comply with electronic monitoring; violations of chapter; penalties and enforcement.

(1)(a) The failure of an offender to personally appear at a Department of Public Safety Driver's License Station or to provide any registration or other information, including, but not limited to, initial registration, reregistration, change of address information, change of employment, change of name, required notification to a volunteer organization or any other registration duty or submission of information required by this chapter is a violation of this chapter. Additionally, forgery of information or submission of information under false pretenses, whether by the registrant or another person, is also a violation of this chapter.

(b) A person commits a violation of this chapter who:

(i) Knowingly harbors, or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this chapter; or

(ii) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this chapter; or

(iii) Provides information to a law enforcement agency regarding a sex offender which the person knows to be false.

(c) A registrant who is required to submit to electronic monitoring who does not comply with all the terms and conditions of the electronic monitoring commits a violation of this chapter.

(2)(a) Unless otherwise specified, a violation of this chapter shall be considered a felony and shall be punishable by a fine of not more than Five Thousand Dollars ($5,000.00), imprisonment in the custody of the Department of Corrections for not more than five (5) years, or both fine and imprisonment.

(b) A person who is required to register under this chapter who is subsequently convicted for a registration violation under this section, upon release from incarceration, shall submit to mandatory electronic monitoring under the program established under Section 45-33-45 for a period computed by subtracting the time the person spent in actual incarceration from the five-year maximum imprisonment for the offense and the period of post-release monitoring shall not be suspended or reduced by the court or the Department of Corrections.

(3) Whenever it appears that an offender has failed to comply with the duty to register, reregister or submit to electronic monitoring, the department shall promptly notify the sheriff of the county of the last-known address of the offender as well as the sheriff of the county of the last-known location of the offender, if different. Upon notification, the sheriff shall attempt to locate the offender at his last-known address or last-known location.

(a) If the sheriff locates the offender, he shall enforce the provisions of this chapter, including initiation of prosecution if appropriate. The sheriff shall then notify the department with the current information regarding the offender.

(b) If the sheriff is unable to locate the offender, the sheriff shall promptly notify the department and initiate a criminal prosecution against the offender for the failure to register, reregister or comply with electronic monitoring. The sheriff shall make the appropriate transactions into the Federal Bureau of Investigation's wanted-person database and issue a warrant for the offender's arrest. The department shall notify the United States Marshals Service of the offender's noncompliant status and shall update the registry database and website to show the defendant's noncompliant status as an absconder.

(4) A violation of this chapter shall result in the arrest of the offender.

(5) Any prosecution for a violation of this section shall be brought by a prosecutor in the county of the violation.

(6) A person required to register under this chapter who commits any act or omission in violation of this chapter may be prosecuted for the act or

omission in the county in which the act or omission was committed, the county of the last registered address of the sex offender, the county in which the conviction occurred for the offense or offenses that meet the criteria requiring the person to register, the county in which he was designated a sex offender, or the county in which the sex offender was found.

(7) The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or driving privilege of any offender failing to comply with the duty to report, register or reregister, submit to monitoring, or who has provided false information.

(8) When a person required to register under this chapter is accused of any registration offense under this section, pretrial release on bond shall be conditioned on the offender's submission to electronic monitoring under the program established under Section 45-33-45.

SOURCES: Laws, 2000, ch. 499, § 7; Laws, 2001, ch. 500, § 6; Laws, 2004, ch. 493, § 2; Laws, 2005, ch. 353, § 4; Laws, 2006, ch. 566, § 3; Laws, 2007, ch. 392, § 6; Laws, 2011, ch. 359, § 7; Laws, 2013, ch. 521, § 6, eff from and after Jan. 1, 2014.

Editor's Note — Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Sufficiency of indictment.

Circuit court erred in denying defendant's post-trial motions because there were innumerable ways to violate the sex-offender-registration statutes, defendant's indictment provided no specific facts, much less the essential facts, as to how he allegedly violated the statute, defendant was not provided notice as to how he failed to register or reregister as a sex offender, could not have prepared a defense, and was exposed to the possibility of being prosecuted for the same action or inaction. Williams v. State, — So. 3d —, 2014 Miss. App. LEXIS 382 (Miss. Ct. App. July 15, 2014).

RESEARCH REFERENCES

ALR. Admissibility of Actuarial Risk Assessment Testimony in Proceeding to Commit Sex Offender. 20 A.L.R.6th 607.

§ 45-33-34. Notification to the Department of Public Safety regarding reincarceration or commitment of registered sex offender.

(1) The Department of Corrections and all law enforcement agencies shall notify the department when a registered sex offender is arrested or incarcerated for another offense or as the result of having violated probation, parole, conditional discharge or other sentence or court order.

(2) The offender, offender's guardian, offender's conservator or the administrator of the institution shall notify the department when a registered sex offender is committed to a mental institution for a reason other than the initial confinement following an acquittal by reason of insanity for a sex offense.

SOURCES: Laws, 2006, ch. 563, § 5; Laws, 2007, ch. 392, § 7, eff from and after July 1, 2007.

§ 45-33-35. Central registry of offenders; duties of agencies to provide information.

(1) The Mississippi Department of Public Safety shall maintain a central registry of sex offender information as defined in Section 45-33-25 and shall adopt rules and regulations necessary to carry out this section. The responsible agencies shall provide the information required in Section 45-33-25 on a form developed by the department to ensure accurate information is maintained.

(2) Upon conviction, adjudication or acquittal by reason of insanity of any sex offender, if the sex offender is not immediately confined or not sentenced to a term of imprisonment, the clerk of the court which convicted and sentenced the sex offender shall inform the person of the duty to register, including the duty to personally appear at a Department of Public Safety Driver's License Station, and shall perform the registration duties as described in Section 45-33-23 and forward the information to the department.

(3) Before release from prison or placement on parole, supervised release or in a work center or restitution center, the Department of Corrections shall inform the person of the duty to register, including the duty to personally appear at a Department of Public Safety Driver's License Station, and shall perform the registration duties as described in Section 45-33-23 and forward the information to the Department of Public Safety.

(4) Before release from a community regional mental health center or from confinement in a mental institution following an acquittal by reason of insanity, the director of the facility shall inform the offender of the duty to register, including the duty to personally appear at a Department of Public Safety Driver's License Station, and shall perform the registration duties as described in Section 45-33-23 and forward the information to the Department of Public Safety.

(5) Before release from a youthful offender facility, the director of the facility shall inform the person of the duty to register, including the duty to personally appear at a Department of Public Safety Driver's License Station,

and shall perform the registration duties as described in Section 45-33-23 and forward the information to the Department of Public Safety.

(6) In addition to performing the registration duties, the responsible agency shall:

(a) Inform the person having a duty to register that:

(i) The person is required to personally appear at a Department of Public Safety Driver's License Station at least ten (10) days before changing address.

(ii) Any change of address to another jurisdiction shall be reported to the department by personally appearing at a Department of Public Safety Driver's License Station not less than ten (10) days before the change of address. The offender shall comply with any registration requirement in the new jurisdiction.

(iii) The person must register in any jurisdiction where the person is employed, carries on a vocation, is stationed in the military or is a student.

(iv) Address verifications shall be made by personally appearing at a Department of Public Safety Driver's License Station within the required time period.

(v) Notification or verification of a change in status of a registrant's enrollment, employment or vocation at any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education shall be reported to the department by personally appearing at a Department of Public Safety Driver's License Station within three (3) business days of the change.

(vi) If the person has been convicted of a sex offense, the person shall notify any organization for which the person volunteers in which volunteers have direct, private or unsupervised contact with minors that the person has been convicted of a sex offense as provided in Section 45-33-32(1).

(vii) Upon any change of name or employment, a registrant is required to personally appear at a Department of Public Safety Driver's License Station within three (3) business days of the change.

(viii) Upon any change of vehicle information, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

(ix) Upon any change of e-mail address or addresses, instant message address or addresses or any other designation used in Internet communications, postings or telephone communications, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

(x) Upon any change of information deemed to be necessary to the state's policy to assist local law enforcement agencies' efforts to protect their communities, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

(b) Require the person to read and sign a form stating that the duty of the person to register under this chapter has been explained.

(c) Obtain or facilitate the obtaining of a biological sample from every registrant as required by this chapter if such biological sample has not already been provided to the Mississippi Forensics Laboratory.

(d) Provide a copy of the order of conviction or sentencing order to the department at the time of registration.

SOURCES: Laws, 2000, ch. 499, § 8; Laws, 2001, ch. 500, § 7; Laws, 2004, ch. 493, § 3; Laws, 2005, ch. 353, § 5; Laws, 2006, ch. 563, § 6; Laws, 2007, ch. 392, § 8; Laws, 2011, ch. 359, § 8; Laws, 2015, ch. 452, § 10, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment substituted “Mississippi Forensics Laboratory” for “Mississippi Crime Lab” in (6)(c).

§ 45-33-36. Duty of Department of Public Safety to provide sex offender registration information; notification to residents.

(1) Upon receipt of sex offender registration or change of registration information, the Department of Public Safety shall immediately provide the information to:

(a) The National Sex Offender Registry or other appropriate databases;

(b) The sheriff of the county and the chief law enforcement officer of any other jurisdiction where the offender resides, lodges, is an employee or is a student or intends to reside, work, attend school or volunteer;

(c) The sheriff of the county and the chief law enforcement officer of any other jurisdiction from which or to which a change of residence, employment or student status occurs;

(d) The Department of Human Services and any other social service entities responsible for protecting minors in the child welfare system;

(e) The probation agency that is currently supervising the sex offender;

(f) Any agency responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993 (42 USC 5119(a));

(g) Each school and public housing agency in each jurisdiction in which the sex offender resides, is an employee or is a student;

(h) All prosecutor offices in each jurisdiction in which the sex offender resides, is an employee, or is a student; and

(i) Any other agencies with criminal investigation, prosecution or sex offender supervision functions in each jurisdiction in which the sex offender resides, is an employee, or is a student.

(2) The Department of Public Safety shall post changes to the public registry website within three (3) business days. Electronic notification will be available via the Internet to all law enforcement agencies, to any volunteer organizations in which contact with minors or vulnerable adults might occur and any organization, company or individual who requests notification pursuant to procedures established by the Department of Public Safety. This

provision shall take effect upon the state's receipt and implementation of the Department of Justice software in compliance with the provisions of the Adam Walsh Act.

(3) From and after July 1, 2015, local jurisdictions receiving notification and that have the ability may notify residents when a sex offender begins residing, lodges, becomes employed, volunteers or attends school or intends to reside, lodge, work, attend school or volunteer in the area by using a website, social media, print media, e-mail or may provide a link to the Department of Public Safety website.

SOURCES: Laws, 2007, ch. 392, § 17; Laws, 2011, ch. 359, § 9; Laws, 2013, ch. 521, § 7, eff from and after Jan. 1, 2014.

Editor's Note — In (2), there is a reference to "vulnerable adults." The "Vulnerable Adults Act," §§ 43-47-1 et seq., was amended by Laws of 2010, ch. 357, to change all references to "vulnerable adults" in the act to "vulnerable persons."

Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

Federal Aspects — The Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, 120 Stat. 587, see 42 USCS § 16901 et seq.

National Sex Offender Registry, see 42 USCS § 16919.

§ 45-33-37. DNA identification system; convicted sex offender to submit biological sample for purposes of DNA identification analysis.

(1) The Mississippi Forensics Laboratory shall develop a plan for and establish a deoxyribonucleic acid (DNA) identification system. In implementing the plan, the Mississippi Forensics Laboratory shall purchase the appropriate equipment. The DNA identification system as established herein shall be compatible with that utilized by the Federal Bureau of Investigation.

(2) From and after January 1, 1996, every individual convicted of a sex offense or in the custody of the Mississippi Department of Corrections for a sex offense as defined in Section 45-33-23 shall submit a biological sample for purposes of DNA identification analysis before release from or transfer to a state correctional facility or county jail or other detention facility.

(3) From and after January 1, 1996, any person having a duty to register under Section 45-33-25 for whom a DNA analysis is not already on file shall submit a biological sample for purposes of DNA identification analysis within five (5) working days after registration.

(4) The Mississippi Forensics Laboratory shall be responsible for the policy management and administration of the state DNA identification record system to support law enforcement and other criminal justice agencies and shall:

(a) Promulgate rules and regulations to implement the provisions of this section; and

(b) Provide for cooperation with the Federal Bureau of Investigation and other criminal justice agencies relating to the state's participation in the Combined DNA Index System (CODIS) program and the national DNA identification index or in any DNA database designated by the Forensics Laboratory.

(5) A DNA sample obtained in good faith shall be deemed to have been obtained in accordance with the requirements of this section. Any entry into the database which is found to be erroneous shall not prohibit law enforcement officials from the legitimate use of information in the furtherance of a criminal investigation.

SOURCES: Laws, 2000, ch. 499, § 9; Laws, 2001, ch. 500, § 8; Laws, 2006, ch. 563, § 7; Laws, 2015, ch. 452, § 11, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment substituted "Forensics Laboratory" for "Crime Laboratory" throughout (1) and (4).

Cross References — Mississippi Forensics Laboratory, see § 45-1-29.

Imposition of laboratory analysis fee in addition to any other assessment and costs imposed by statutory authority for any felony conviction, see § 45-1-29.

RESEARCH REFERENCES

ALR. Validity, construction, and operation of state DNA database statutes. 76 A.L.R.5th 239.

Authentication of blood sample taken from human body for purposes other than determining blood alcohol content. 77 A.L.R.5th 201.

§ 45-33-39. Notification to defendant charged with sex offense; notice included on any guilty plea form and judgement and sentence forms.

(1) The court shall provide written notification to any defendant charged with a sex offense as defined by this chapter of the registration requirements of Sections 45-33-25 and 45-33-31. Such notice shall be included on any guilty plea forms and judgment and sentence forms provided to the defendant. The court shall obtain a written acknowledgment of receipt on each occasion.

(2) A court imposing a sentence, disposition or order of commitment following acquittal by reason of insanity shall notify the offender of the registration requirements of Sections 45-33-25 and 45-33-31. The court shall obtain a written acknowledgment of receipt on each occasion.

(3) A court having jurisdiction of any of the offenses enumerated in Section 45-33-23(h) shall cause to be forwarded to the Department of Public Safety a certified record of conviction in such court of any person of any of the offenses listed.

SOURCES: Laws, 2000, ch. 499, § 10; Laws, 2011, ch. 359, § 10, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in subsection (3) by substituting "45-33-23(h)" for "45-33-23(g)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

JUDICIAL DECISIONS

1. Construction.

Trial judge is not required, prior to accepting a guilty plea, to inform a defendant of the sex offender registration laws, Miss. Code Ann. §§ 45-33-25 through 45-33-31, because Miss. Code Ann. § 45-33-39(1) confers no right on a criminal defendant charged with a sex crime and imposes no duty on trial judges, and since the requirement to register as a sex offender is a collateral consequence of a guilty plea, the trial court will not be put in error for failing to advise a defendant of the registration requirements before accepting his guilty plea; the Mississippi legislative branch of government may not, through procedural legislation, control the function of the judiciary, and subservience to legislation that mandates what trial judges must say to a defendant in a courtroom during a plea hearing would be tantamount to both an abdication of judicial duty, as well as tacit approval of legislative usurpation of the judicial prerogative. Magyar v. State, 18 So. 3d 807 (Miss. 2009), writ of certiorari denied by 560 U.S. 903, 130 S. Ct. 3274, 176 L. Ed. 2d 1182, 2010 U.S. LEXIS 3999, 78 U.S.L.W. 3667 (2010).

§ 45-33-41. Notification to inmates and offenders by Department of Corrections, county or municipal jails, and juvenile detention facilities; victim notification.

(1) The Department of Corrections or any person having charge of a county or municipal jail or any juvenile detention facility shall provide written notification to an inmate or offender in the custody of the jail or other facility due to a conviction of or adjudication for a sex offense of the registration and notification requirements of Sections 45-33-25, 45-33-31, 45-33-32 and 45-33-59 at the time of the inmate's or offender's confinement and release from confinement, and shall receive a signed acknowledgment of receipt on both occasions.

(2) At least fifteen (15) days prior to the inmate's release from confinement, the Department of Corrections shall notify the victim of the offense or a designee of the immediate family of the victim regarding the date when the offender's release shall occur, provided a current address of the victim or designated family member has been furnished in writing to the Director of Records for such purpose.

SOURCES: Laws, 2000, ch. 499, § 11; Laws, 2004, ch. 493, § 4; Laws, 2007, ch. 392, § 9; Laws, 2014, ch. 457, § 77, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "fifteen (15)" for "ten (10)" at the beginning of (2).

§ 45-33-43. Written notification to applicants for certain driver's licenses; written acknowledgment by applicant of receipt of notification.

At the time a person surrenders a driver's license from another jurisdiction or makes an application for a driver's license, temporary driving permit, intermediate license, commercial driver's license or identification card issued under Section 45-35-3, the department shall provide the applicant with written information on the registration requirements of this chapter and shall require written acknowledgment by the applicant of receipt of the notification.

SOURCES: Laws, 2000, ch. 499, § 12; Laws, 2007, ch. 392, § 10, eff from and after July 1, 2007.

§ 45-33-45. Data monitoring and alert system for certain persons required to be monitored.

(1) The Department of Corrections may enter into a contract with a qualified vendor experienced in and capable of fulfilling the requirements of this section on a daily basis to provide a data monitoring and alert system for persons who are required to be monitored under this chapter. The initial program shall provide for monitoring upon release of the offenders listed in Section 45-33-33 or 45-33-47 as being obligated to be monitored while on bond or upon release from confinement.

(2) The system shall monitor the movement of a monitored subject through public records or other record information systems, and, at a minimum, shall provide:

(a) Time-correlated or continuous tracking of the geographic location of the monitored subject using a Global Positioning System that is based on satellite and other location technology;

(b) An automated monitoring system that can be used to permit law enforcement agencies to compare the geographic positions of monitored subjects with reported crime incidents and the proximity of the monitored subject to a reported crime incident; and

(c) From and after January 1, 2015, and subject to regulations promulgated by the Commissioner of Corrections, notification to:

(i) A victim or family of a victim who have registered for notification when the offender is within a specified range of the victim's or family's residence; and

(ii) Law enforcement when an offender is within the prohibited range of a school or other place where the offender is prohibited from being.

(3) The vendor shall notify the Department of Public Safety or a local law enforcement agency if a registered sex offender does any of the following:

(a) Moves from a residence or address in this state to a residence or address in another state.

(b) Moves from a residence or address in this state to another residence or address in this state.

(4) The Department of Corrections shall develop procedures to determine, investigate and report on a twenty-four-hour-per-day basis a monitored subject's noncompliance with the terms and conditions of the program, and all reports of noncompliance shall be investigated immediately by the law enforcement agency having jurisdiction that receives a report of noncompliance.

(5)(a) The system shall be installed and operational not later than January 1, 2014, following an appropriate testing period. The initial program shall consist of monitoring of the required offenders; in the second phase, the program will provide for notification to victims who have registered for notification.

(b) The Commissioner of Corrections shall study and develop recommendations for the Legislature as to the advisability of monitoring of additional registrants not later than January 1, 2015.

(6) The Commissioner of Corrections may adopt regulations to establish fees and otherwise administer monitoring of sex offenders as required under this chapter.

(7) Notwithstanding any provision of law, rule or regulation to the contrary, the Department of Corrections, Attorney General, Department of Public Safety, Mississippi Bureau of Investigation, and federal, county and municipal law enforcement agencies may share criminal incident information with each other and the vendor selected to provide the monitoring equipment for the program for the purposes of detection and prevention of crime.

SOURCES: Laws, 2013, ch. 521, § 4, eff from and after January 1, 2014.

Editor's Note — Former § 45-33-45 set forth standards for the designation of an offender as a sexual predator.

Chapter 521, Laws of 2013, which enacted this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

§ 45-33-47. Petition for relief from duty to register; grounds; minimum period of continuing registration based on three-tier classification of offenses; certain offenders subject to lifetime registration; certain offenders subject to electronic monitoring.

(1) A sex offender with a duty to register under Section 45-33-25 shall only be relieved of the duty under subsection (2) of this section.

(2) A person required to register for a registrable sex offense under Section 45-33-25 may petition the circuit court of the sentencing jurisdiction, or for a person whose duty to register arose in another jurisdiction, the county in which the registrant resides, to be relieved of that duty under the following conditions:

(a) The offender has maintained his registration in Mississippi for the required minimum registration from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation or as determined by the offender's tier classification. Incarceration for any offense will restart the minimum registration requirement. Registration in any other jurisdiction does not reduce the minimum time requirement for maintaining registration in Mississippi.

(b) **Tier One.** — (i) Tier One requires registration for a minimum of fifteen (15) years in this state and includes any of the following listed registrable sex offenses:

1. Section 97-5-27(1) relating to dissemination of sexually oriented material to children;
2. Section 97-29-61(2) relating to voyeurism when the victim is a child under sixteen (16) years of age;
3. Section 97-29-3 relating to misdemeanor sexual intercourse between teacher and student;
4. Section 97-29-45(1)(a) relating to obscene electronic communication;
5. Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this tier;
6. Any conviction for violation of a similar law of another jurisdiction of any offense listed in this tier;
7. Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had, although registration would not be otherwise required in this state.

(ii) Notwithstanding any other provision of this chapter, an offender may petition the appropriate circuit court to be relieved of the duty to register upon fifteen (15) years' satisfaction of the requirements of this section for the convictions classified as Tier One offenses.

(c) **Tier Two.** — (i) Tier Two requires registration for a minimum of twenty-five (25) years in this state and includes any of the following listed registrable sex offenses:

1. Section 97-5-33(3) through (9) relating to the exploitation of children;
2. Section 97-29-59 relating to unnatural intercourse;
3. Section 97-29-63, relating to filming another without permission where there is an expectation of privacy;
4. Section 97-3-104 relating to crime of sexual activity between law enforcement or correctional personnel and prisoners;
5. Section 43-47-18(2)(a) and (b) relating to gratification of lust or fondling by health care employees or persons in position of trust or authority;
6. Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this tier;
7. Any conviction for violation of a similar law of another jurisdiction of any offense listed in this tier; or

8. Any conviction of a Tier One offense if it is the offender's second or subsequent conviction of a registrable sex offense;

(ii) Notwithstanding any other provision of this chapter, an offender may petition the appropriate circuit court to be relieved of the duty to register upon twenty-five (25) years' satisfaction of the requirements of this section for the convictions classified as Tier Two offenses.

(d) **Tier Three.** — Tier Three requires lifetime registration, the registrant not being eligible to be relieved of the duty to register except as otherwise provided in this section, and includes any of the following listed registrable sex offenses:

(i) Section 97-3-65 relating to rape;

(ii) Section 97-3-71 relating to rape and assault with intent to ravish;

(iii) Section 97-3-95 relating to sexual battery;

(iv) Subsection (1) or (2) of Section 97-5-33 relating to the exploitation of children;

(v) Section 97-5-5 relating to enticing a child for concealment, prostitution or marriage;

(vi) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;

(vii) Section 97-3-53 relating to kidnapping if the victim is under the age of eighteen (18);

(viii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor;

(ix) Section 97-3-54.3 relating to aiding, abetting or conspiring to violate antihuman trafficking provisions;

(x) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;

(xi) Section 43-47-18 relating to sexual abuse of a vulnerable person by health care employees or persons in a position of trust or authority;

(xii) Section 97-5-39(1)(c) relating to contributing to the neglect or delinquency of a child, felonious abuse and/or battery of a child, if the victim was sexually abused;

(xiii) Capital murder when one (1) of the above described offenses is the underlying crime;

(xiv) Any conviction for violation of a similar law of another jurisdiction or designation as a sexual predator in another jurisdiction;

(xv) Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this tier; or

(xvi) Any conviction of a Tier Two offense if it is the offender's second or subsequent conviction of a registrable sex offense.

(e) An offender who has two (2) separate convictions for any of the registrable offenses described in Section 45-33-23 is subject to lifetime registration and shall not be eligible to petition to be relieved of the duty to register if at least one (1) of the convictions was entered on or after July 1, 1995.

(f) An offender, twenty-one (21) years of age or older, who is convicted of any sex offense where the victim was fourteen (14) years of age or younger shall be subject to lifetime registration and shall not be relieved of the duty to register.

(g) A first-time offender fourteen (14) years of age or older adjudicated delinquent in a youth court for a registrable offense of rape pursuant to Section 96-3-65 or a registrable offense of sexual battery pursuant to Section 97-3-95 is subject to lifetime registration, but shall be eligible to petition to be relieved of the duty to register after twenty-five (25) years of registration.

(h) Registration following arrest or arraignment for failure to register is not a defense and does not relieve the sex offender of criminal liability for failure to register.

(i) The department shall continue to list in the registry the name and registration information of all registrants who no longer work, reside or attend school in this state even after the registrant moves to another jurisdiction and registers in the new jurisdiction as required by law. The registry shall note that the registrant moved out of state.

(3) In determining whether to release an offender from the obligation to register, the court shall consider the nature of the registrable offense committed and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction. The court may relieve the offender of the duty to register only if the petitioner shows, by clear and convincing evidence, that the registrant properly maintained his registration as required by law and that future registration of the petitioner will not serve the purposes of this chapter and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The district attorney in the circuit in which the petition is filed must be given notice of the petition at least three (3) weeks before the hearing on the matter. The district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the petitioner may not again petition the court for relief until one (1) year has elapsed unless the court orders otherwise in its order of denial of relief.

(4) The offender will be required to continue registration for any sex offense conviction unless the conviction is set aside in any post-conviction proceeding, the offender receives a pardon, the charge is dismissed or the offender has received a court order pursuant to this section relieving him of the duty to register. Upon submission of the appropriate documentation to the department of one (1) of these occurrences, registration duties will be discontinued.

(5) A person required to register as a sex offender who is convicted under Section 45-33-33 of providing false registration information or of failure to register, reregister, update registration, or comply with electronic monitoring shall be subject to electronic monitoring at the expense of the offender under the program provided in Section 45-33-45. Termination of the duty to register also terminates the duty to be monitored.

SOURCES: Laws, 2000, ch. 499, § 14; Laws, 2001, ch. 500, § 10; Laws, 2006, ch. 566, § 4; Laws, 2007, ch. 392, § 11; Laws, 2011, ch. 359, § 11; Laws, 2013, ch. 521, § 3, eff from and after Jan. 1, 2014.

Editor's Note — In (2)(d)(xi), there is a reference to "Section 43-47-18 relating to sexual abuse of a vulnerable adult." Section 43-47-18 was amended by Laws of 2010, ch. 357, § 10, to relate to sexual abuse of a vulnerable person.

In subsection (2)(e), "96-3-65" should probably read "97-3-65."

Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

JUDICIAL DECISIONS

1. Review.
2. Violation of similar law of another jurisdiction.
3. Expungement of conviction.

1. Review.

Although the State argued on appeal that no registration exemption in the statute applied, defendant failed to assert any exemption other than Miss. Code Ann. § 45-33-23(h)(ii), and thus, the issue was not properly before the court of appeals. Williams v. State, — So. 3d —, 2015 Miss. App. LEXIS 197 (Miss. Ct. App. Apr. 14, 2015).

2. Violation of similar law of another jurisdiction.

Trial court did not abuse its discretion in granting a motion to set aside and render as void an earlier judgment, which relieved defendant of the duty to register as a sex offender. Defendant's California conviction had not been set aside or dismissed in accordance with Miss. Code Ann. § 45-33-47(4). Witten v. State Ex Rel. Miss. Dep't of Pub. Safety, — So. 3d —, 2014 Miss. LEXIS 308 (Miss. June 26, 2014).

Offender was required to continue registering as a sex offender due to his guilty plea to a Maryland sex offense because: (1) the offender admitted in his plea that he had placed his hands on the victim's vagina without her consent; and (2) his conduct and plea satisfied the elements of the Mississippi crime of attempted sexual battery, which was a registrable offense under Miss. Code Ann. § 45-33-25(1). Stallworth v. Miss. Dep't of Pub. Safety, 986 So. 2d 259 (Miss. 2008).

3. Expungement of conviction.

Expungement of a misdemeanor, fourth-degree, sexual-offense conviction in Maryland by the court that entered the conviction entitled defendant to relief from his duty to register as a sex offender in Mississippi because, at the moment defendant's Maryland conviction was expunged, the law provided that he was restored to the status he had occupied before he was convicted, which meant that — in the eyes of the law — he had no conviction for a registrable sexual offense, and, without such conviction, he had no duty to register as a sex offender. Stallworth v. State, — So. 3d —, 2015 Miss. LEXIS 171 (Miss. Apr. 16, 2015).

§ 45-33-49. Disclosure to public; guidelines for sheriffs as to notification; certain registry information to be available online; participation in Dru Sjodin National Sex Offender Public website; notification of schools and day care centers.

(1) Records maintained pursuant to this chapter shall be open to law enforcement agencies which shall be authorized to release relevant and necessary information regarding sex offenders to the public.

(2) The identity of a victim of an offense that requires registration under this chapter shall not be released.

(3) A sheriff shall maintain records for registrants of the county and shall make available to any person upon request the name, address, place of employment, crime for which convicted, date and place of conviction of any registrant, and any other information deemed necessary for the protection of the public. The sheriffs shall be responsible for verifying their respective registries annually against the department's records to ensure current information is available at both levels.

(4)(a) Upon written request, the department shall provide to any person the name, address, photograph, if available, date of photograph, place of employment, crime for which convicted, date and place of conviction of any registrant, hair, eye color, height, race, sex and date of birth of any registrant, and any other information deemed necessary for the protection of the public.

(b)(i) The Department of Public Safety shall maintain an Internet website in a manner that will permit the public to obtain relevant information for each sex offender in the registry as required in this subsection (4). The website shall permit the public to obtain relevant information for each offender by a single query for any given name, zip code, municipality, county or geographic radius set by the user.

(ii) The Department of Public Safety shall participate in the Dru Sjodin National Sex Offender Public website. The information required to be displayed on the public registry website includes the offender's name and all known aliases; a current photograph; a physical description; the offender's residential addresses including the offender's permanent address and any address at which the offender habitually lives; employer address; school address; the current sex offense for which the offender is registered; criminal history of any other sex offenses for which the offender has been convicted; a description of the offender's vehicle including license tag number; and the offender's status if designated as noncompliant or an absconder because of failure to comply with the requirements of this chapter.

(iii) The public website shall not display the identity of a victim of an offense that requires registration under this chapter or the registered sex offender's social security number, travel or immigration document numbers, Internet identifiers, telephone numbers, or any arrests not resulting in conviction.

(5) The Department of Education, the Mississippi Private School Association and the Department of Health shall notify all schools and licensed day care centers annually regarding the availability upon request of this information.

(6) Nothing in this section shall be construed to prevent law enforcement officers from notifying members of the public exposed to danger of any circumstances or individuals that pose a danger under circumstances that are not enumerated in this section.

(7) Nothing in this chapter shall be construed to prevent law enforcement officers from providing community notification of any circumstances or individuals that pose or could pose a danger under circumstances that are not enumerated in this chapter.

SOURCES: Laws, 2000, ch. 499, § 15; Laws, 2001, ch. 500, § 11; Laws, 2011, ch. 359, § 12, eff from and after July 1, 2011.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

Notification of Department of Education that certificated person has been convicted of sex offense, see § 37-3-51.

ATTORNEY GENERAL OPINIONS

If the department must incur fees in obtaining sex offense criminal history record information on behalf of the entities which are required to obtain such information, then this is a cost which may be passed on to these entities by the Department [opinion under prior law]. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

Former § 45-31-12 did not restrict the state information that could be disseminated to child residential entities pursuant to former § 45-31-11 [opinion under prior law]. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

Sex offense criminal history records are exempt from any of the state laws authorizing expungement, and such records are exempt from any court order for such expungement [opinion under prior law]. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

The release of "relevant information" regarding sex offenders appearing on the sex offender registry to the public by any law enforcement agency is permitted. Further, if any special circumstances are present which pose a particular danger to the community or individual members of the public, information may be released. There is no requirement placed on local law enforcement agencies to release this information. Belk, July 18, 2003, A.G. Op. 03-0326.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statutes authorizing community notification of release of convicted sex offender. 78 A.L.R.5th 489.

Am Jur. 8 Am. Jur. Pl & Pr Forms (Rev) Declaratory Judgments, Form 4.2 (Complaint, petition, or declaration — to determine constitutionality of state agency procedures — placement on list of persons perpetrating sexual abuse of children — absence of prior notice and opportunity to be heard).

§ 45-33-51. Misuse of information; penalties.

(1) Any person who willfully misuses or alters public record information relating to a sex offender or sexual predator, or a person residing or working at an address reported by a sex offender, including information displayed by law enforcement agencies on web sites, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisonment in the county jail not more than six (6) months, or both.

(2) The sale or exchange of sex offender information for profit is prohibited. Any violation of this subsection (2) is a misdemeanor and shall be

punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisonment in the county jail not more than six (6) months, or both.

SOURCES: Laws, 2000, ch. 499, § 16; Laws, 2007, ch. 392, § 12, eff from and after July 1, 2007.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

The release of any sex offender information, including information available on the Department of Public Safety's website, for a profit is prohibited; thus, it would violate the statute for a private company to charge a fee for a notification function which would send an alert by e-mail to registered member residents informing them that a new offender has moved within their geographic proximity and advising members to check the department's web site for detailed information concerning the offender. Davis, Apr. 13, 2001, A.G. Op. #01-0200.

§ 45-33-53. Immunity from civil liability; immunity for exercise of discretion under chapter.

(1) An elected public official, public employee, or public agency is immune from civil liability for damages for any discretionary decision to release relevant and necessary information unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

(2) Nothing in this chapter shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for failing to release information as authorized in this section.

(3) Notwithstanding any other provision of law to the contrary, any person who provides or fails to provide information relevant to the procedures set forth in this chapter shall not be liable therefor in any civil or criminal action. Nothing herein shall be deemed to grant any such immunity to any person for his willful or wanton act of commission or omission.

SOURCES: Laws, 2000, ch. 499, § 17, eff from and after July 1, 2000.

RESEARCH REFERENCES

ALR. Employer's knowledge of employee's past criminal record as affecting liability for employee's tortious conduct. 48 A.L.R.3d 359.

§ 45-33-55. Exemptions for expunction.

Except for juvenile criminal history information that has been sealed by order of the court, this chapter exempts sex offenses from laws of this state or court orders authorizing the destroying, expunging, purging or sealing of criminal history records to the extent such information is authorized for dissemination under this chapter.

SOURCES: Laws, 2000, ch. 499, § 18, eff from and after July 1, 2000.

JUDICIAL DECISIONS

1. Expungement of conviction.

In a case expunging a misdemeanor, fourth-degree, sexual-offense conviction in Maryland by the court that entered the conviction, because this statute said nothing about an order that expunged a conviction, but, rather, it spoke to laws and orders affecting the maintenance of criminal history records, the supreme court declined to stretch this document-management, record-keeping statute beyond its provisions and apply it to an expungement of a conviction case. Stallworth v. State, — So. 3d —, 2015 Miss. LEXIS 171 (Miss. Apr. 16, 2015).

§ 45-33-57. Fees.

(1) The Department of Public Safety may adopt regulations to establish fees to be charged for information requests under this chapter.

(2) The Department of Public Safety may adopt regulations to establish fees to be charged to registrants for registration, reregistration, and verification or change of address.

(3) Regulations promulgated under this section shall be duly filed with the Secretary of State under the Administrative Procedures Act.

SOURCES: Laws, 2000, ch. 499, § 19; Laws, 2005, ch. 353, § 6; Laws, 2014, ch. 424, § 2, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment added “under this chapter” to the end of (1) and added (3).

Cross References — Administrative Procedures Act, see §§ 25-43-1.101 et seq.

§ 45-33-59. Sex offenders employed in positions of close contact with children required to notify employers in writing of sex offender status.

(1) Any person convicted of a sex offense who is employed in any position, or who contracts with a person to provide personal services, where the employment position or personal services contract will bring the person into close regular contact with children shall notify in writing the employer or the person with whom the person has contracted of his sex offender status.

(2) This section applies to all registered sex offenders regardless of the date of conviction.

SOURCES: Laws, 2006, ch. 566, § 7; Laws, 2007, ch. 392, § 13, eff from and after July 1, 2007.

§ 45-33-61. Access to Administrative Office of Courts' youth court data management system by sex offenders prohibited.

(1) A person convicted of a sex offense shall not access the Administrative Office of Courts' youth court data management system known as the Mississippi Youth Court Information Delivery System or "MYCIDS."

(2) This section applies to all registered sex offenders without regard to the date of conviction for a registrable offense.

SOURCES: Laws, 2012, ch. 410, § 2, eff from and after passage (approved Apr. 18, 2012.)

Editor's Note — Laws of 2012, ch. 410, § 4 provides:

"SECTION 4. Sections 1 and 2 of this act shall take effect and be in force from and after its passage [April 18, 2012], and the remainder of this act shall take effect and be in force from and after July 1, 2012."

CHAPTER 35

Identification Cards

Article 1. General Provisions 45-35-1
Article 3. Personal Identification Cards for Persons With Disabilities 45-35-51

Article 1.

General Provisions.

Sec.
45-35-1. Definitions.
45-35-3. Issuance of identification card by Department of Public Safety; application for card; registered sex offender's card to identify cardholder as sex offender; designation as veteran on card upon request of honorably discharged veteran.
45-35-5. Data required for issuance of identification card.
45-35-7. Expiration; renewal; fees; records; registration with Selective Service.
45-35-9. Duplicates; fee; return of original.
45-35-11. Form.
45-35-13. Unlawful use of cards; penalties.
45-35-15. Liability of public entities.

§ 45-35-1. Definitions.

For the purposes of this article the following words shall have the meanings herein ascribed unless the context clearly requires otherwise:

(a) "Department" means the Department of Public Safety;

(b) "Commissioner" means the Commissioner of Public Safety; and

(c) "Identification card" means a card issued under the provisions of this article by the Department of Public Safety.

SOURCES: Laws, 1988, ch. 570, § 1, eff from and after July 1, 1988.

§ 45-35-3. Issuance of identification card by Department of Public Safety; application for card; registered sex offender's card to identify cardholder as sex offender; designation as veteran on card upon request of honorably discharged veteran.

(1) Any person six (6) years of age or older may be issued an identification card by the department which is certified by the registrant and attested by the commissioner as to true name, correct age and such other identifying data as required by Section 45-35-5.

(2) The new, renewal or duplicate identification card of a person required to register as a sex offender pursuant to Section 45-33-25 shall bear a designation identifying the cardholder as a sex offender.

(3) The commissioner is authorized to provide the new, renewal or duplicate identification card to any honorably discharged veteran as defined in

Title 38 of the United States Code, and such identification card shall exhibit the letters "Vet" or any other mark identifying the person as a veteran. The veteran requesting the "Vet" designation shall present his DD-214 or equivalent document that includes a notation from the state Veterans Affairs Board that the applicant is a veteran.

SOURCES: Laws, 1988, ch. 570, § 2; Laws, 1996, ch. 322, § 2; Laws, 2001, ch. 343, § 1; Laws, 2007, ch. 392, § 15; Laws, 2012, ch. 561, § 3, eff from and after passage (approved May 23, 2012.)

Cross References — Registration of sex offenders generally, see §§ 45-33-1 et seq.

§ 45-35-5. Data required for issuance of identification card.

Data for the issuance of an identification card shall include a birth certificate or other document to establish the age and identity of the applicant, the social security number of the applicant, and such other identifying data as is required on an application for issuance of a drivers license.

SOURCES: Laws, 1988, ch. 570, § 3, eff from and after July 1, 1988.

Cross References — Authorization to issue identification cards, see § 45-35-3.
Information required on an application for a driver's license, see § 63-1-19.

§ 45-35-7. Expiration; renewal; fees; records; registration with Selective Service.

(1)(a) Except as provided in paragraph (b) of this subsection (1), each applicant for an original or renewal identification card issued pursuant to this chapter who is entitled to issuance of such a card shall be issued a four-year card or an eight-year card, at the option of the applicant. Each card shall expire at midnight on the cardholder's birthday and may be renewed any time within six (6) months before the expiration date of the card upon application and payment of the required fee.

(b) Any applicant who is blind, as defined in Section 43-6-1, upon payment of the fee prescribed in Section 63-1-43, shall be issued an original or renewal identification card which shall remain valid for a period of eight (8) years, shall expire at midnight on the cardholder's birthday, and may be renewed any time within six (6) months before the expiration date of the card upon application and payment of the required fee.

(2)(a) Any applicant who is not a United States citizen, upon payment of the fee prescribed in Section 63-1-43, shall be issued an original or renewal identification card which shall expire four (4) years from date of issuance or on the expiration date of the applicant's authorized stay in the United States, whichever is the lesser period of time, and may be renewed, if the person is otherwise qualified to renew the license, within thirty (30) days of expiration.

(b) An applicant for an original or renewal identification card under paragraph (a) must present valid documentary evidence documenting that the applicant:

(i) Is a citizen or national of the United States;

(ii) Is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) Has conditional permanent residence status in the United States;

(iv) Has an approved application for asylum in the United States or has entered into the United States in refugee status;

(v) Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into or lawful presence in the United States;

(vi) Has a pending application for asylum in the United States;

(vii) Has a pending or approved application for temporary protected status in the United States;

(viii) Has approved deferred-action status;

(ix) Has pending an application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; or

(x) Has a valid employment authorization card issued by the United States Department of Homeland Security.

(3) The fee for the issuance of an original or renewal identification card shall be as prescribed in Section 63-1-43.

(4) Any person who, for medical reasons, surrenders his unexpired driver's license, and any person whose unexpired driver's license is suspended for medical reasons by the Commissioner of Public Safety under Section 63-1-53(2)(e), upon request shall be issued an identification card without payment of a fee. The identification card shall be valid for a period of four (4) years from its date of issue. Subsequent renewals shall be subject to the fees prescribed in Section 63-1-43.

(5) The department shall maintain a record of all identification cards issued.

(6)(a) Any male who is at least eighteen (18) years of age but less than twenty-six (26) years of age and who applies for an identification card or a renewal of an identification card under this chapter shall be registered in compliance with the requirements of Section 3 of the Military Selective Service Act, 50 USCS Appx 451 et seq., as amended.

(b) The department shall forward in an electronic format the necessary personal information of the applicant to the Selective Service System. The applicant's submission of the application shall serve as an indication that the applicant either has already registered with the Selective Service System or that he is authorizing the department to forward to the Selective Service System the necessary information for registration. The commissioner shall notify the applicant on, or as a part of, the application that his submission of the application will serve as his consent to registration with the Selective Service System, if so required. The commissioner also shall notify any male applicant under the age of eighteen (18) that he will be registered upon turning age eighteen (18) as required by federal law.

SOURCES: Laws, 1988, ch. 570, § 4; Laws, 1992, ch. 370, § 1; Laws, 1996, ch. 322, § 1; Laws, 2001, ch. 535, § 5; Laws, 2002, ch. 388, § 3; Laws, 2002, ch. 447, § 1; Laws, 2002, ch. 584, § 7; Laws, 2010, ch. 423, § 3; Laws, 2014, ch. 424, § 3, eff from and after Oct. 1, 2014.

Joint Legislative Committee Note — Section 3 of ch. 388, Laws of 2002, eff from and after September 1, 2002 (approved March 19, 2002), amended this section. Section 1 of ch. 447, Laws of 2002, eff from and after passage (approved March 20, 2002), and Section 7 of ch. 584, Laws of 2002, eff from and after September 1, 2002 (approved April 11, 2002), also amended this section. As set out above, this section reflects the language of Section 7 of ch. 584, Laws of 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in (6). The reference to "Section 63-1-53(e)," was changed to "Section 63-1-53(2)(e)." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Amendment Notes — The 2014 amendment rewrote the section to conform the fees charged by the Department of Public Safety for nondriver identification cards to the new fee schedule.

Federal Aspects — Military Selective Service Act, see 50 USCS Appx 451 et seq.

§ 45-35-9. Duplicates; fee; return of original.

(1) If an identification card issued under this chapter is lost, destroyed or mutilated, or a new name or other updated information is required, the person to whom it was issued may obtain a duplicate by furnishing the same identifying data as for an original card and paying the fee prescribed in Section 63-1-43.

(2) Any person who loses an identification card and who, after obtaining a duplicate, finds the original card shall promptly surrender the original card to the department.

SOURCES: Laws, 1988, ch. 570, § 5; Laws, 2002, ch. 584, § 2; Laws, 2014, ch. 424, § 4, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment rewrote (1) to conform the fees charged by the Department of Public Safety for nondriver identification cards to the new fee schedule.

§ 45-35-11. Form.

All identification cards shall be centrally issued by the department, adequately describe the registrant, bear a color photograph of the registrant, and include other such identifying data as required by Section 45-35-5.

SOURCES: Laws, 1988, ch. 570, § 6, eff from and after July 1, 1988.

Cross References — Notification of Department of Education that certificated person has been convicted of sex offense, see § 37-3-51.

§ 45-35-13. Unlawful use of cards; penalties.

(1) No person shall:

(a) Display, or cause or permit to be displayed, or have in his possession, any cancelled, fictitious, fraudulently altered or fraudulently obtained identification cards;

(b) Lend an identification card to any person or knowingly permit the use thereof by another;

(c) Display or represent any identification card not issued to him as being his card;

(d) Permit any unlawful use of an identification card issued to him;

(e) Do any act forbidden or fail to perform any act required by this article;

(f) Photograph, photostat, duplicate or in any way reproduce, manufacture, sell or distribute any identification card or facsimile thereof so that it could be mistaken for a valid identification card; or

(g) Display or have in his possession any photograph, photostat, duplicate, reproduction or facsimile of an identification card unless authorized by the provisions of this article.

(2) Any person convicted of a violation of any provision of paragraphs (a), (b), (c), (d), (e) or (g) of subsection (1) of this section is guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

(3) Any person under twenty-one (21) years of age at the time of the offense who is convicted of a violation of paragraph (f) of subsection (1) of this section shall be punished as follows:

(a) A first offense shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

(b) A second or subsequent offense, the offenses being committed within a period of five (5) years, shall be a misdemeanor punishable by a fine of not more than Five Thousand Dollars ($5,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(4) Any person twenty-one (21) years of age or older at the time of the offense who is convicted of a violation of paragraph (f) of subsection (1) of this section is guilty of a felony and shall be punished by a fine of not less than Five Thousand Dollars ($5,000.00), or imprisonment for not more than three (3) years, or by both such fine and imprisonment.

SOURCES: Laws, 1988, ch. 570, § 7; Laws, 1998, ch. 558, § 1; Laws, 2001, ch. 551, § 1, eff from and after July 1, 2001.

Editor's Note — The last sentence of (4) probably applies to the issuance and renewal fee provided for in the first sentence of (4), not to the photograph fee.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

§ 45-35-15. Liability of public entities.

No public entity or public official shall be liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in an identification card issued pursuant to this article.

SOURCES: Laws, 1988, ch. 570, § 8, eff from and after July 1, 1988.

ARTICLE 3.

PERSONAL IDENTIFICATION CARDS FOR PERSONS WITH DISABILITIES.

SEC.

45-35-51. Definitions.
45-35-53. Issuance of personal identification card; information to be included on card.
45-35-55. Issuance of cards to persons with permanent disabilities and renewal thereof; issuance of cards to persons with temporary disabilities and renewal thereof.
45-35-57. Special transportation services for persons with disabilities.
45-35-59. Special seating for persons with disabilities.
45-35-61. Rules and regulations.
45-35-63. Proof of date of birth.
45-35-65. Fee.
45-35-67. Misuse of identification card a misdemeanor.

§ 45-35-51. Definitions.

As used in this article, the term:

(a) "Commissioner" means the Commissioner of the Department of Public Safety.

(b) "Department" means Department of Public Safety.

(c) "Disability" means any physical, mental or neurological impairment which severely restricts a person's mobility, manual dexterity or ability to climb stairs; substantial loss of sight or hearing; loss of one or more limbs or use thereof; or significantly diminished reasoning capacity.

(d) "Identification card for persons with disabilities" means an identification card issued as provided in this article.

(e) "Permanent disability" means any disability which is permanent in nature or which is expected to continue for a period of at least five (5) years.

(f) "Person with disabilities" means any person with a permanent or temporary disability.

(g) "Temporary disability" means any disability which is expected to continue for at least six (6) months but less than five (5) years.

SOURCES: Laws, 2005, ch. 464, § 1, eff from and after July 1, 2005.

§ 45-35-53. Issuance of personal identification card; information to be included on card.

(1) The Department of Public Safety shall issue personal identification cards to persons with disabilities who make application to the department in accordance with rules and regulations prescribed by the commissioner by filing with the Secretary of State under the Administrative Procedures Act. The identification card for persons with disabilities shall prominently display the international handicapped symbol and, in addition to any other information required by this article, may contain a recent color photograph of the applicant and the following information:

(a) Full legal name;
(b) Address of residence;
(c) Birth date;
(d) Date identification card was issued;
(e) Date identification card expires;
(f) Sex;
(g) Height;
(h) Weight;
(i) Eye color;
(j) Location where the identification card was issued;
(k) Signature of person identified or facsimile thereof; and
(*l*) Such other information as required by the department.

(2) The identification card for persons with disabilities shall bear an identification card number which shall not be the same as the applicant's social security number. The commissioner shall prescribe the form of identification cards issued pursuant to this article to persons who are not United States citizens. The identification cards of such persons shall include a number and any other identifying information prescribed by the commissioner.

SOURCES: Laws, 2005, ch. 464, § 2; Laws, 2014, ch. 424, § 5, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment, in (1), inserted "by filing with the Secretary of State under the Administrative Procedures Act" following "commissioner" at the end of the first sentence; added "and" at the end of (1)(k); deleted (1)(*l*), which read "Fingerprint of person identified; and"; and redesignated former (1)(m) as present (1)(*l*); in (2), in the first sentence, deleted "shall bear the signatures of the commissioner and the Governor and" following "identification card for persons with disabilities," and "unless the person specifically requests that the social security number be used" following "the applicant's social security number," and at the end of the second sentence, deleted "and who do not possess a social security number issued by the United States government" following "who are not United States citizens."

Cross References — Administrative Procedures Act, see §§ 25-43-1.101 et seq.

§ 45-35-55. Issuance of cards to persons with permanent disabilities and renewal thereof; issuance of cards to persons with temporary disabilities and renewal thereof.

(1) The identification card for persons with disabilities shall be issued to a person with a permanent disability for a period of four (4) years, shall expire at midnight on the cardholder's birthday, and may be renewed any time within six (6) months before the expiration date of the card upon application and payment of the required fee. The identification cards shall be issued to persons with disabilities upon presentation of the current sworn affidavit of at least one (1) medical doctor attesting to such permanent disability. A current affidavit shall be presented at each request for renewal.

(2) The identification card for persons with temporary disabilities shall be issued to a person with a temporary disability upon presentation of a sworn affidavit of at least one (1) medical doctor attesting to the disability and estimating the duration of the disability. Temporary disability identification cards shall be issued for periods of six (6) months. A current affidavit of a medical doctor attesting to the continuance of the disability shall be presented at each request for renewal thereafter.

SOURCES: Laws, 2005, ch. 464, § 3; Laws, 2014, ch. 424, § 6, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment, substituted the present (1) for the former (1), which read: "(1) The identification card for persons with disabilities shall be issued to a person with a permanent disability for a period of four (4) years and shall be renewable on the applicant's birthday in the fourth year following such issuance. The identification cards shall be issued to persons: (a) With obvious permanent disabilities without further verification of disability; and (b) With disabilities which are not obvious upon presentation of the current sworn affidavit of at least one (1) medical doctor attesting to such permanent disability. A current affidavit shall be presented at each request for renewal"; and in (2), substituted "the" for "such" in three places, "Temporary disability" for "Such", and inserted "temporary" following "identification card for persons with."

Cross References — "Permanent disability" and "temporary disability" defined, see § 45-35-51.

§ 45-35-57. Special transportation services for persons with disabilities.

The face of the identification card for persons with disabilities shall bear the word "TRANSPORTATION" with a box or blank space adjacent thereto. The issuer of the card shall place an "X" in such box or blank space if the applicant's disability creates mobility limitations which prevent him or her from climbing stairs or otherwise from entering normally designed buses or other vehicles normally used for public transportation. When so marked, the identification card for persons with disabilities shall serve as sufficient proof of the need for special transportation services for persons with disabilities provided by any entity in this state.

SOURCES: Laws, 2005, ch. 464, § 4, eff from and after July 1, 2005.

§ 45-35-59. Special seating for persons with disabilities.

The identification card for persons with disabilities shall bear the word "SEATING" with a box or blank space adjacent thereto. The issuer of the card shall place an "X" in such box or blank space if the applicant's disability creates mobility or health limitations which prevent him or her from climbing stairs or steep inclines. When so marked, the identification card for persons with disabilities shall be sufficient to admit the holder to seating for persons with disabilities at public events in this state.

SOURCES: Laws, 2005, ch. 464, § 5, eff from and after July 1, 2005.

§ 45-35-61. Rules and regulations.

The commissioner shall promulgate rules and regulations under which this article shall be implemented.

SOURCES: Laws, 2005, ch. 464, § 6, eff from and after July 1, 2005.

§ 45-35-63. Proof of date of birth.

The department shall require an applicant for an identification card for persons with disabilities to furnish a birth certificate or other verifiable evidence stating the applicant's birth date.

SOURCES: Laws, 2005, ch. 464, § 7, eff from and after July 1, 2005.

§ 45-35-65. Fee.

The department shall collect a fee for an identification card for persons with disabilities as prescribed in Section 63-1-43.

SOURCES: Laws, 2005, ch. 464, § 8; Laws, 2014, ch. 424, § 7, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment deleted "of Fifteen Dollars ($15.00)" following "The department shall collect a fee" and substituted "as prescribed in Section 63-1-43" for ", which fee shall be deposited in the State Treasury in the same manner as motor vehicle driver's license fees."

§ 45-35-67. Misuse of identification card a misdemeanor.

It is a misdemeanor for any person:

(a) To lend his or her identification card for persons with disabilities to any other person or knowingly to permit the use thereof by another; and

(b) To display or represent as his or her own any identification card for persons with disabilities not issued to him or her.

SOURCES: Laws, 2005, ch. 464, § 9, eff from and after July 1, 2005.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 37

Prevention of Youth Access to Tobacco Act

Sec.
45-37-1 and 45-37-3. Repealed.
45-37-5. Repealed.
45-37-7. Repealed.

§§ 45-37-1 and 45-37-3. Repealed.

Repealed by Laws, 1997, ch. 578, § 15, eff from and after February 1, 1998.

§ 45-37-1. [Laws, 1994, ch. 486, § 1]
§ 45-37-3. [Laws, 1994, ch. 486, § 2]

Editor's Note — For provisions in effect after February 1, 1998, see Mississippi Juvenile Tobacco Access Prevention Act, §§ 97-32-1 et seq.

Former § 45-37-1 related to the Federal government mandate to enact the provisions of this chapter.

Former § 45-37-3 related to the short title for this chapter.

§ 45-37-5. Repealed.

Repealed by Laws, 2002, ch. 314, § 1, approved March 14, 2002.

[Laws, 1994, ch. 486, § 3, eff from and after July 1, 1994.]

Editor's Note — Former § 45-37-5 provided that the Legislature intended for the enforcement and supremacy of state law over local law with respect to the prevention of youth access to tobacco. For present similar provisions, see Mississippi Juvenile Tobacco Access Prevention Act, §§ 97-32-1 et seq.

§ 45-37-7. Repealed.

Repealed by Laws, 1997, ch. 578, § 15, eff from and after February 1, 1998.

[Laws, 1994, ch. 486, § 4]

Editor's Note — Former § 45-37-7 related to enforcement, inspections and testing compliance with the provisions of this chapter.

For provisions in effect after February 1, 1998, see Mississippi Juvenile Tobacco Access Prevention Act, §§ 97-32-1 et seq.

CHAPTER 39

Statewide Crime Stoppers Advisory Council

Sec.	
45-39-1.	Definitions.
45-39-3.	Creation.
45-39-5.	Duties; powers and authority.
45-39-7.	Records; confidentiality.
45-39-9.	Offenses.
45-39-11.	Establishment and operation of a toll-free telephone number for reporting information about criminal acts.
45-39-13.	Intent.
45-39-15.	Local crime stoppers programs.
45-39-17.	Certain localities authorized to assess surcharge upon persons fined for certain misdemeanors to fund local crime stoppers programs.

§ 45-39-1. Definitions.

As used in this chapter:

(a) "Council" means the Crime Stoppers Advisory Council.

(b) "Local crime stoppers program" means the acceptance and spending of donations by a private, nonprofit organization for the awarding of rewards to persons who report information concerning criminal activity to the organization if the organization:

(i) Operates less than statewide; and

(ii) Forwards reported information to the appropriate law enforcement agency.

SOURCES: Laws, 1996, ch. 529, § 1, eff from and after July 1, 1996.

Editor's Note — Laws of 1996, ch. 529, § 9, which included a repealer for this section, was amended by Laws of 1997, ch. 550, § 4, to delete the repealer.

ATTORNEY GENERAL OPINIONS

A county board of supervisors may authorize placing on county vehicles signs, decals or stickers advertising the Crime Stoppers program. Huggins, Dec. 22, 2006, A.G. Op. 06-0618.

§ 45-39-3. Creation.

There is hereby created within the Department of Public Safety the Crime Stoppers Advisory Council. The council shall be composed of five (5) persons appointed by the Governor with the advice and consent of the Senate. At least three (3) of the foregoing appointees shall be persons who have participated in a local crime stoppers program. Each member of the council shall serve for a term of two (2) years or until his successor is appointed and qualifies. At the first meeting of the council, which shall be called by the Governor, and at the first meeting after the beginning of each new state fiscal year, the council shall elect from among its members a chairman and such other officers as the council deems necessary. Each member of the council shall receive per diem in the amount established in Section 25-3-69, Mississippi Code of 1972, for each day or portion thereof spent discharging his duties under this chapter and shall receive mileage and expenses as provided in Section 25-3-41, Mississippi Code of 1972.

Expenses of the council shall be paid by the Department of Public Safety out of the State Crime Stoppers Fund, created in Section 45-39-5(4).

SOURCES: Laws, 1996, ch. 529, § 2; Laws, 1997, ch. 550, § 1, eff from and after July 1, 1997.

Editor's Note — Laws of 1996, ch. 529, § 9, which included a repealer for this section, was amended by Laws of 1997, ch. 550, § 4, to delete the repealer.

§ 45-39-5. Duties; powers and authority.

(1) The council may contract with a person to serve as its director or, with the concurrence of the Commissioner of Public Safety, may employ an individual within the Department of Public Safety to serve as director. The council shall establish the authority and responsibilities of the director.

(2) The council shall:

(a) Advise and assist in the creation of local crime stoppers programs;

(b) Foster the detection of crime and encourage persons to report information about criminal acts;

(c) Encourage news and other media to promote local crime stoppers programs and to inform the public of the functions of the council;

(d) Assist local crime stoppers programs in forwarding information about criminal acts to the appropriate law enforcement agencies; and

(e) Help law enforcement agencies detect and combat crime by increasing the flow of information to and between law enforcement agencies.

(3) The council may adopt rules to carry out its duties under this chapter.

(4) The assessments collected under subsection (5) of Section 99-19-73, Mississippi Code of 1972, and any other funds as may be made available through contributions from private or public sources, shall be deposited in a special fund that is hereby created in the State Treasury and designated the State Crime Stoppers Fund. Monies deposited in the fund shall be expended by the council, pursuant to appropriation therefor by the Legislature, for the authorized purposes of the State Crime Stoppers Program established under this chapter, including, but not limited to, providing reward monies for individuals who legitimately report crime activity. Any such funds paid to such individuals shall be kept confidential by the council, and any audit of the fund and the expenditures of the council shall provide for the confidentiality of any expenditures to such individuals. The Department of Public Safety shall have the authority to accept, budget and expend for any proper expenses of the Crime Stoppers Advisory Council any special source funds made available to the Crime Stoppers Program subject to the approval of the Department of Finance and Administration and in accordance with procedures for federal fund escalations as established in Section 27-104-21.

(5) The council shall have the authority to require financial statement reporting from any local crime stoppers program receiving any type of public funding, including, but not limited to, surcharges, assessments, fees or other funds paid directly to a local crime stoppers program by a municipal or county agency, including funds received under Section 45-39-17.

SOURCES: Laws, 1996, ch. 529, § 3; Laws, 1997, ch. 550, § 2; Laws, 2009, ch. 403, § 1, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 529, § 9, which included a repealer for this section, was amended by Laws of 1997, ch. 550, § 4, to delete the repealer.

ATTORNEY GENERAL OPINIONS

Failure to pay an outstanding fine would not be criminal activity to be reported by citizens to crime stoppers. Walters, May 10, 2005, A.G. Op. 05-0141.

§ 45-39-7. Records; confidentiality.

(1) Council records relating to reports of criminal acts are confidential.

(2) Evidence of a communication between a person submitting a report of a criminal act to the council or a local crime stoppers program and the person who accepted the report on behalf of the council or local crime stoppers program is not admissible in a court or an administrative proceeding whether the evidence is held by the council or a local crime stoppers program or is held by a telecommunication service provider.

(3) Records of the council or a local crime stoppers program concerning a report of criminal activity and records of a telecommunication service provider relating to a report made to the council or to a local crime stoppers program may not be compelled to be produced before a court or other tribunal except on the motion of a criminal defendant to the court in which the offense is being tried that the records or report contain evidence that is exculpatory to the defendant in the trial of that offense. On motion of a defendant under this subsection, the court may subpoena the records or report. The court shall conduct an in-camera inspection of materials produced under subpoena to determine whether the materials contain evidence that is exculpatory to the defendant. If the court determines that the materials produced contain evidence that is exculpatory to the defendant, the court shall present the evidence to the defendant in a form that does not disclose the identity of the person who was the source of the evidence, unless the state or federal constitution requires the disclosure of that person's identity. The court shall execute an affidavit accompanying the disclosed materials swearing that, in the opinion of the court, the materials disclosed represent the exculpatory evidence the defendant is entitled to receive under this section. The court shall return to the council or to the local crime stoppers program materials that are produced under this section but not disclosed to the defendant. The council or local crime stoppers program shall store the materials until the conclusion of

the criminal trial and the expiration of the time for all direct appeals in the case.

SOURCES: Laws, 1996, ch. 529, § 4; Laws, 2002, ch. 308, § 3, eff from and after July 1, 2002.

Editor's Note — Laws of 1996, ch. 529, § 9, which included a repealer for this section, was amended by Laws of 1997 of ch. 550, § 4, to delete the repealer.

§ 45-39-9. Offenses.

A person who is a member or employee of the council or who accepts a report of criminal activity on behalf of a local crime stoppers program is guilty of a misdemeanor if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

A person convicted of an offense under this section shall be punished as provided in Section 99-19-31, Mississippi Code of 1972, and is not eligible for state employment during the five-year period following the date that the conviction becomes final.

SOURCES: Laws, 1996, ch. 529, § 5, eff from and after July 1, 1996.

Editor's Note — Laws of 1996, ch. 529, § 9, which included a repealer for this section, was amended by Laws of 1997, ch. 550, § 4, to delete the repealer.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 45-39-11. Establishment and operation of a toll-free telephone number for reporting information about criminal acts.

The council shall establish and operate a toll-free telephone service and make the service accessible to persons residing in areas of the state not served by a local crime stoppers program for reporting to the council information about criminal acts. The toll-free service must be available between the hours of 5:00 p.m. and 8:00 a.m. Monday through Thursday and from 5:00 p.m. Friday until 8:00 a.m. Monday. The council shall forward the information received to appropriate law enforcement agencies or local crime stoppers programs.

SOURCES: Laws, 1996, ch. 529, § 6, eff from and after July 1, 1996.

Editor's Note — Laws of 1996, ch. 529, § 9, which included a repealer for this section, was amended by Laws of 1997 of ch. 550, § 4, to delete the repealer.

§ 45-39-13. Intent.

The establishment of any Crime Stoppers Advisory Council shall not impede the intent or process of the Vulnerable Adults Acts of 1986 as provided in Section 43-47-1 et seq.

SOURCES: Laws, 1996, ch. 529, § 7, eff from and after July 1, 1996.

Editor's Note — Laws of 1996, ch. 529, § 9, which included a repealer for this section, was amended by Laws of 1997, ch. 550, § 4, to delete the repealer.

Laws of 2010, ch. 357, amended the "Vulnerable Adults Act of 1986," referenced in this section, to be the "Vulnerable Persons Act of 1986."

§ 45-39-15. Local crime stoppers programs.

The board of supervisors of a county and the governing authority of a municipality are authorized to contribute funds to a local crime stoppers program from the general fund of the county or municipality or any other available source if the local crime stoppers program is established to operate, in whole or in part, within the boundaries of that county or municipality.

This chapter shall not repeal or affect any local and private act establishing a county or local crime stoppers program providing for the operation and funding of such program.

SOURCES: Laws, 1996, ch. 529, § 8; Laws, 2002, ch. 308, § 2, eff from and after July 1, 2002.

Editor's Note — Laws of 1996, ch. 529, § 9, which included a repealer for this section, was amended by Laws of 1997, ch. 550, § 4, to delete the repealer.

§ 45-39-17. Certain localities authorized to assess surcharge upon persons fined for certain misdemeanors to fund local crime stoppers programs.

In addition to any other monetary penalties and other penalties imposed by law, any county or municipality by ordinance may assess an additional surcharge in an amount not to exceed Two Dollars ($2.00) on each person upon whom a county, justice or municipal court imposes a fine or other penalty for any misdemeanor other than offenses relating to vehicular parking or registration if there is established to the benefit of the citizens of the county or municipality a local crime stoppers program which is not authorized to receive funds under local and private legislation. The proceeds from the surcharge may be used by a county or municipality only to fund that county's or municipality's support of the local crime stoppers program as authorized by Section 45-39-15, Mississippi Code of 1972. The proceeds from the surcharge imposed by this section shall be deposited into a special fund in the Department of Public Safety's Office of Public Safety Planning which shall promulgate rules and procedures relating to the administration of the special fund and the disbursement of monies in the fund to participating counties and municipalities. The maximum amount that a county or municipality may receive from the special fund shall be an amount equal to the deposits made into the fund by that entity, less one percent (1%) to be retained by the Office of Public Safety Planning to defray the costs of administering the special fund. Interest earned on the special fund shall remain in the fund and shall be used by the Office of Public Safety Planning to further defray the costs of administering the special fund.

SOURCES: Laws, 2002, ch. 308, § 1, eff from and after July 1, 2002.

CHAPTER 41

Mississippi Silver Alert System

Sec.

45-41-1. Short title; legislative findings; definitions; criteria for activation of Silver Alert; duties of local law enforcement agencies and Department of Public Safety; alternative mass notification.

§ 45-41-1. Short title; legislative findings; definitions; criteria for activation of Silver Alert; duties of local law enforcement agencies and Department of Public Safety; alternative mass notification.

(1) This section shall be known and cited as the "Mississippi Silver Alert System Act of 2010."

(2) The Legislature finds that:

(a) Wandering is a common behavior among those persons with dementia or other cognitive impairments that causes great concern for the families and caregivers of this state;

(b) This state is not currently equipped with the systems necessary to locate those with dementia or other cognitive impairments in a timely manner, with the unfortunate result that some individuals are never returned home to their families; and

(c) It is imperative that this state develops a plan to ensure that if an individual with dementia or other cognitive impairments is missing, the appropriate infrastructure is available and can be easily and timely activated to protect the health and safety of these vulnerable citizens.

(3) When used in this section, unless the context requires a different definition, the following terms shall have the following meanings:

(a) "E911" means Enhanced Universal Emergency Number Service or Enhanced 911 Service, which is a telephone exchange communications service by which a Public Safety Answering Point designated by the county or local communication district may receive telephone calls dialed to the telephone number 911.

(b) "First responders" means state and local law enforcement personnel, fire department personnel, emergency medical personnel, emergency management personnel and public works personnel who may be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters and emergencies.

(c) "Originating local law enforcement agency" means a local police or sheriff's office that has jurisdiction over the area where a person became missing.

(4)(a) The Bureau of Investigation of the Department of Public Safety shall implement a statewide "Silver Alert System" that has the purpose of providing a tiered, rapid response system to notify the public about missing endangered adults, who are age 18 or older, with dementia or other cognitive impairments. The initial response may be local, statewide or national based on available information about the missing person.

(b) A Silver Alert activation request may be made only by a law enforcement agency, and the Bureau of Investigation of the Department of Public Safety may only activate a Silver Alert after a request is made.

(c) To activate a Silver Alert, all of the following criteria must be met:

(i) The missing adult, age 18 or older, is believed to have dementia or other cognitive impairments;

(ii) The person is believed to be missing and in imminent danger regardless of circumstance;

(iii) The family, legal caregiver or custodian of the missing person has submitted a missing person's report to the local law enforcement agency in the jurisdiction where the person became missing, with all waiting periods being waived; and

(iv) The law enforcement agency that has jurisdiction of where the person became missing reports the incident to the Bureau of Investigation of the Department of Public Safety through the Mississippi Highway Patrol Headquarters Communication Center.

(d) To initiate a request to activate a Silver Alert, the family, legal caregiver or custodian of the missing person must file immediately a report of the missing person with the local law enforcement agency where the person became missing that includes the following information:

(i) A description of the missing person including physical characteristics, clothing and photos, if available;

(ii) A description of the known circumstances under which the person became missing including the time, place, direction, possible destinations, whether the person is walking or in a vehicle, and all other pertinent information concerning where the person may have become missing; and

(iii) Updates on the missing person as new information becomes available.

(e) The originating local law enforcement agency, after completing the investigation expeditiously and determining that the case meets the qualifying criteria prescribed in this section, shall:

(i) Waive in the case of a Silver Alert, any waiting periods for a missing person's report in order to galvanize the appropriate communities rapidly to assist in the search for and the safe recovery of the missing person;

(ii) Notify the Mississippi Highway Patrol Headquarters Communication Center and electronically send to the center the completed Silver Alert forms and available photos, signed by the police chief, sheriff, commanding officer or his or her designee;

(iii) Enter the information into the National Crime Information Center (NCIC);

(iv) Using a tiered approach based on known circumstances, initiate an alert bulletin to all local law enforcement, E911 and first responder agencies to search the immediate area;

(v) Activate secondary alert systems to residents, businesses, and broadcast media in the immediate area;

(vi) Provide a twenty-four-hour phone number to receive calls while continuing the investigation; and

(vii) Update the family, legal caregiver or custodian of the missing person as new information becomes available.

(5)(a) After the Bureau of Investigation of the Department of Public Safety has been contacted by a local law enforcement agency requesting a Silver Alert activation, the Criminal Information Center shall consider before the activation of the Silver Alert procedures by the Silver Alert coordinator, or his or her designee, the information contained in the initial Silver Alert report form to ensure that it meets all criteria specified in subsection (4)(c) of this section. Elements of the missing person case to be considered are:

(i) Threat of imminent harm or death to the missing person because of age, health, mental or physical disability, environmental or weather conditions;

(ii) Time of initial report in relation to the time of disappearance, including whether the disappearance is unexplained, involuntary or is under suspicious circumstances;

(iii) Believed to be walking or in a vehicle;

(iv) Witness information;

(v) Possible domestic dispute involving the missing person; and

(vi) Other facts that indicate the missing person is in danger of serious injury or death, including whether there is possible criminal intent toward the missing person or whether someone witnessed the disappearance.

(b) Each case shall be reviewed on its own merits, and if there are extenuating circumstances, the required criteria in this section may be amended or expanded depending on the merits presented.

(c) Only the Silver Alert coordinator, or his or her designee, may authorize activation of a statewide Silver Alert and if an activation is authorized, the Criminal Information Center shall:

(i) Prepare an announcement concerning the missing person;

(ii) Contact the designated media stations to activate the alert; and

(iii) Request the Mississippi Department of Transportation to activate electronic signs, if appropriate.

(d) If the missing person is believed to be in a vehicle, the Silver Alert coordinator shall send information and available photos via emails and fax to the statewide communications systems, news media and other forms of public communication or electronic resources.

(6)(a) Following the initial alert, a Silver Alert broadcast shall be updated by television and radio stations as necessary until such time that an end of alert message is received from the law enforcement agency that requested the initial Silver Alert.

(b) Local and statewide broadcast stations shall exercise their own independent discretions as to whether to repeat the required broadcasts prescribed in this section more frequently and shall determine the frequency in which the alert is re-broadcast following the initial alert.

(c) The Silver Alert termination notification shall be issued twenty-four (24) hours after the airing of the latest and most current information or when the case has been resolved and verification from the originating local law enforcement agency has been received by the Department of Public Safety.

(7)(a) If the circumstances of a person's disappearance do not meet the criteria for a Silver Alert to activate statewide communication systems, the Bureau of Investigation of the Department of Public Safety may offer an alternate form of mass notification as provided in this section.

(b) The alternate form of mass notification may be an email that includes a photograph and the Silver Alert initial reporting form that is sent through a statewide network of law enforcement and first responder agencies, news media offices and other forms of public communication.

(c) The email authorized in paragraph (b) of this subsection (7) shall contain information taken from the Silver Alert initial reporting form that is submitted by the originating local law enforcement agency.

(d) The email alerting news media and law enforcement agencies of a person's disappearance that does not meet the criteria of a Silver Alert activation shall include the following paragraph at the beginning of the email:

"The (name of law enforcement agency) has requested the following information be provided to the Mississippi news media and law enforcement agencies: At the present time, information being provided to the Mississippi Department of Public Safety by the (name of law enforcement agency) does not meet the criteria to activate a Silver Alert. It is left to the discretion of each law enforcement agency and news department receiving this email as to whether the attached information, regarding the disappearance of this person and/or the photograph of this person, will be released to the public."

(e) If further investigation into the disappearance produces evidence that may change the initial circumstances as reported to local law enforcement, the Department of Public Safety may reconsider activating a Silver Alert.

SOURCES: Laws, 2010, ch. 422, § 1, eff from and after July 1, 2010.

CHAPTER 43

William Lee Montjoy Pool Safety Act

Sec.	
45-43-1.	Short title.
45-43-3.	Definitions.
45-43-5.	Applicability.
45-43-7.	Certain property owners or owners associations that own, control or maintain a pool required to completely enclose pool yard.
45-43-9.	Requirements for gates and latches.
45-43-11.	Applicability to existing pool yard enclosures.
45-43-13.	Requirements regarding doors that open into pool yard.
45-43-15.	Use of a wall of a building as part of pool yard enclosure; when permitted.
45-43-17.	Compliance with Sections 45-43-13 and 45-43-15.
45-43-19.	Inspection, maintenance, repair and upkeep of pool yard enclosures, gates, windows, doors, latching devices, etc.
45-43-21.	Compliance with chapter; exceeding chapter standards.
45-43-23.	Enforcement of chapter.
45-43-25.	Applicability to other bodies of water.
45-43-27.	Relation to other laws, regulations.
45-43-29.	Remedies not exclusive.
45-43-31.	Construction and purpose.

§ 45-43-1. Short title.

This chapter shall be known and cited as the "William Lee Montjoy Pool Safety Act."

SOURCES: Laws, 2012, ch. 508, § 1, eff from and after July 1, 2012.

§ 45-43-3. Definitions.

The following words shall have the following meanings for purposes of this chapter:

(a) "Self-closing and self-latching device" means a device that causes a gate to automatically close without human or electrical power after it has been opened and to automatically latch without human or electrical power when the gate closes.

(b) "Doorknob lock" means a lock that is in a doorknob and that is operated from the exterior by a key, card, or combination and from the interior without a key, card, or combination.

(c) "Dwelling" or "rental dwelling" means one or more rooms rented to one or more tenants for use as a permanent residence under a lease. The term does not include a room rented to overnight guests.

(d) "French doors" means double doors, sometimes called double-hinged patio doors, that provide access from a dwelling interior to the exterior and in which each of the two (2) doors are hinged and closable so that the edge of one (1) door closes immediately adjacent to the edge of the other door with no partition between the doors. "French door" means either one (1) of the two (2) doors.

(e) "Keyed dead bolt" means a door lock that is not in the doorknob, that locks by a bolt in the doorjamb, that has a bolt with at least a one-inch throw if installed after July 1, 2012, and that is operated from the exterior by a key, card, or combination and operated from the interior by a knob or lever without a key, card, or combination. The term includes a doorknob lock that contains a bolt with at least a one-inch throw.

(f)(i) "Keyless bolting device" means a door lock not in the doorknob that locks:

1. With a bolt with a one-inch throw into a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed or into a metal doorjamb that serves as the strike plate, operable only by knob or lever from the door's interior and not in any manner from the door's exterior, and that is commonly known as a keyless dead bolt;

2. By a drop bolt system operated by placing a central metal plate over a metal doorjamb restraint which protrudes from the doorjamb and which is affixed to the doorjamb frame by means of three (3) case-hardened screws at least three (3) inches in length. One-half (½) of the central plate must overlap the interior surface of the door and the other one-half (½) of the central plate must overlap the doorjamb when the plate is placed over the doorjamb restraint. The drop bolt system must prevent the door from being opened unless the central plate is lifted off of the doorjamb restraint by a person who is on the interior side of the door; or

3. By a metal bar or metal tube that is placed across the entire interior side of the door and secured in place at each end of the bar or tube by heavy-duty metal screw hooks. The screw hooks must be at least three (3) inches in length and must be screwed into the doorframe stud or wall stud on each side of the door. The bar or tube must be capable of being secured to both of the screw hooks and must be permanently attached in some way to the doorframe stud or wall stud. When secured to the screw hooks, the bar or tube must prevent the door from being opened unless the bar or tube is removed by a person who is on the interior side of the door.

(ii) The term does not include a chain latch, flip latch, surface-mounted slide bolt, mortise door bolt, surface-mounted barrel bolt, surface-mounted swing bar door guard, spring-loaded night latch, foot bolt, or other lock or latch.

(g) "Multiunit rental complex" means two (2) or more dwelling units in one or more buildings that are under common ownership, managed by the same owner, managing agent, or management company, and located on the same lot or tract of land or adjacent lots or tracts of land. The term includes a condominium, cooperative, or townhome project. The term does not include:

(i) A facility primarily renting rooms to overnight guests; or

(ii) A single-family home or adjacent single-family homes that are not part of a condominium, cooperative, or townhome project.

(h) "Pool" means a permanent swimming pool, permanent wading or reflection pool, or permanent hot tub or spa over eighteen (18) inches deep, located at ground level, above ground, below ground, or indoors.

(i) "Pool yard" means an area that contains a pool.

(j) "Pool yard enclosure" or "enclosure" means a fence, wall, or combination of fences, walls, gates, windows, or doors that completely surround a pool.

(k) "Private club" means country club, golf club, tennis club, yacht club, gym or any similar association or organization that provides services or facilities to its members and that is not usually open to the public.

(*l*) "Property owners association" means an association of property owners for a residential subdivision, a condominium, cooperative or townhome project, or other project involving residential dwellings.

(m) "Sliding-door handle latch" means a latch or lock that is near the handle on a sliding glass door, that is operated with or without a key, and that is designed to prevent the door from being opened.

(n) "Sliding-door pin lock" means a pin or rod that is inserted from the interior side of a sliding glass door at the side opposite the door's handle and that is designed to prevent the door from being opened or lifted.

(o) "Sliding-door security bar" means a bar or rod that can be placed at the bottom of or across the interior side of the fixed panel of a sliding glass door and that is designed to prevent the sliding panel of the door from being opened.

(p) "Tenant" means a person who is obligated to pay rent or other consideration and who is authorized to occupy a dwelling, to the exclusion of others, under a verbal or written lease or rental agreement.

(q) "Window latch" means a device on a window or window screen that prevents the window or window screen from being opened and that is operated without a key and only from the interior.

SOURCES: Laws, 2012, ch. 508, § 2, eff from and after July 1, 2012.

§ 45-43-5. Applicability.

The provisions of this chapter shall only apply to: a pool owned, controlled or maintained by the owner of a multiunit rental complex, property owners association, or private club; and doors and windows of rental dwellings opening into the pool yard of a multiunit rental complex or a condominium, cooperative, or townhome project. This chapter does not apply to any private club that does not allow members or guests under the age of twelve (12) or to any multiunit rental complex that does not allow residents under the age of twelve (12).

SOURCES: Laws, 2012, ch. 508, § 3, eff from and after July 1, 2012.

§ 45-43-7. Certain property owners or owners associations that own, control or maintain a pool required to completely enclose pool yard.

(1) Except as otherwise provided by Section 45-43-11, the owner of a multiunit rental complex with a pool or a property owners association that owns, controls or maintains a pool shall completely enclose the pool yard with a pool yard enclosure.

(2) The height of the pool yard enclosure must be at least forty-eight (48) inches as measured from the ground on the side away from the pool.

(3) Openings under the pool yard enclosure may not allow a sphere four (4) inches in diameter to pass under the pool yard enclosure.

(4) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least forty-five (45) inches, the openings may not allow a sphere four (4) inches in diameter to pass through the enclosure.

(5) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is less than forty-five (45) inches, the openings may not allow a sphere one and three-fourths (1-¾) inches in diameter to pass through the enclosure.

(6) The use of chain-link fencing materials is prohibited entirely for a new pool yard enclosure that is constructed after July 1, 2012. The use of diagonal fencing members that are lower than forty-nine (49) inches above the ground is prohibited for a new pool yard enclosure that is constructed after July 1, 2012.

(7) Decorative designs or cutouts on or in the pool yard enclosure may not contain any openings greater than one and three-fourths (1-¾) inches in any direction.

(8) Indentations or protrusions in a solid pool yard enclosure without any openings may not be greater than normal construction tolerances and tooled masonry joints on the side away from the pool.

(9) Permanent equipment or structures may not be constructed or placed in a manner that makes them readily available for climbing over the pool yard enclosure.

(10) The wall of a building may be part of the pool yard enclosure only if the doors and windows in the wall comply with Sections 45-43-13 and 45-43-15.

(11) The owner of a multiunit rental complex with a pool, or a property owners association that owns, controls or maintains a pool, is not required to:

(a) Build a pool yard enclosure at specified locations or distances from the pool other than distances for minimum walkways around the pool; or

(b) Conform secondary pool yard enclosures, located inside or outside the primary pool yard enclosure, to the requirements of this chapter.

SOURCES: Laws, 2012, ch. 508, § 4, eff from and after July 1, 2012.

§ 45-43-9. Requirements for gates and latches.

(1) Except as otherwise provided by Section 45-43-11, a gate in a fence or wall enclosing a pool yard as required by Section 45-43-7 shall:

(a) Have a self-closing and self-latching device;

(b) Have hardware enabling it to be locked, at the option of whoever controls the gate, by a padlock or a built-in lock operated by key, card, or combination; and

(c) Open outward away from the pool yard.

(2) Except as otherwise provided by subsection (3) of this section and Section 45-43-11, a gate latch must be installed so that it is at least sixty (60) inches above the ground, except that it may be installed lower if:

(a) The latch is installed on the pool yard side of the gate only and is at least three (3) inches below the top of the gate; and

(b) The gate or enclosure has no opening greater than one-half (½) inch in any direction within eighteen (18) inches from the latch, including the space between the gate and the gatepost to which the gate latches.

(3) A gate latch may be located forty-two (42) inches or higher above the ground if the gate cannot be opened except by key, card, or combination on both sides of the gate.

SOURCES: Laws, 2012, ch. 508, § 5, eff from and after July 1, 2012.

§ 45-43-11. Applicability to existing pool yard enclosures.

(1) If a pool yard enclosure is constructed or modified before July 1, 2012, the provisions of this chapter shall not apply, except that any gate in a pool yard enclosure shall conform to Section 45-43-9 no later than January 1, 2013.

(2) This chapter provides no exemption from any local ordinance that may apply to the pool yard enclosure.

(3) A pool yard enclosure modified on or after July 1, 2012, shall conform with this section and Sections 45-43-7 and 45-43-9 as a part of the modification.

SOURCES: Laws, 2012, ch. 508, § 6, eff from and after July 1, 2012.

§ 45-43-13. Requirements regarding doors that open into pool yard.

(1) A door, sliding glass door, or French door may not open directly into a pool yard if the date of electrical service for initial construction of the building or pool is on or after July 1, 2012.

(2) A door, sliding glass door, or French door may open directly into a pool yard if the date of electrical service for initial construction of the building or pool is before July 1, 2012, and the pool yard enclosure complies with subsection (3), (4) or (5) of this section, as applicable.

(3) If a door of a building, other than a sliding glass door or screen door, opens into the pool yard, the door must have a:

(a) Latch that automatically engages when the door is closed;

(b) Spring-loaded door-hinge pin, automatic door closer, or similar device to cause the door to close automatically; and

(c) Keyless bolting device that is installed not less than thirty-six (36) inches or more than forty-eight (48) inches above the interior floor.

(4) If French doors of a building open to the pool yard, one (1) of the French doors must comply with subsection (3)(a) of this section and the other door must have:

(a) A keyed dead bolt or keyless bolting device capable of insertion into the doorjamb above the door, and a keyless bolting device capable of insertion into the floor or threshold; or

(b) A bolt with at least a three-fourths (¾) inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the doorjamb above the door and another bolt with at least a three-fourths (¾) inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the floor or threshold.

(5) If a sliding glass door of a building opens into the pool yard, the sliding glass door must have:

(a) A sliding-door handle latch or sliding-door security bar that is installed not more than forty-eight (48) inches above the interior floor; and

(b) A sliding-door pin lock that is installed not more than forty-eight (48) inches above the interior floor.

(6) A door, sliding glass door, or French door that opens into a pool yard from an area of a building that is not used by residents and that has no access to an area outside the pool yard is not required to have a lock, latch, dead bolt, or keyless bolting device.

(7) A keyed dead bolt, keyless bolting device, sliding-door pin lock, or sliding-door security bar installed before July 1, 2012, may be installed not more than fifty-four (54) inches from the floor.

(8) A keyed dead bolt or keyless dead bolt, as described by Section 45-43-3, installed in a dwelling on or after July 1, 2012, must have a bolt with a throw of not less than one (1) inch.

SOURCES: Laws, 2012, ch. 508, § 7, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a code reference in subsection (8). The Joint Committee ratified the correction at its August 16, 2012, meeting.

§ 45-43-15. Use of a wall of a building as part of pool yard enclosure; when permitted.

A wall of a building constructed before July 1, 2012, may not be used as part of a pool yard enclosure unless each window in the wall has a latch and unless each window screen on a window in the wall is affixed by a window screen latch, screws, or similar means. This section does not require the installation of window screens. A wall of a building constructed on or after July 1, 2012, may not be used as part of a pool yard enclosure unless each ground floor window in the wall is permanently closed and unable to be opened.

SOURCES: Laws, 2012, ch. 508, § 8, eff from and after July 1, 2012.

§ 45-43-17. Compliance with Sections 45-43-13 and 45-43-15.

Each door, sliding glass door, window, and window screen of each dwelling unit in a residential building located in the enclosed pool yard must comply with Sections 45-43-13 and 45-43-15.

SOURCES: Laws, 2012, ch. 508, § 9, eff from and after July 1, 2012.

§ 45-43-19. Inspection, maintenance, repair and upkeep of pool yard enclosures, gates, windows, doors, latching devices, etc.

(1) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool shall exercise ordinary and reasonable care to inspect, maintain, repair and keep in good working order the pool yard enclosures, gates and self-closing and self-latching devices required by this chapter and within the control of the owner or property owners association.

(2) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool shall exercise ordinary and reasonable care to maintain, repair and keep in good working order the window latches, sliding-door handle latches, sliding-door pin locks, and sliding-door security bars required by this chapter and within the control of the owner or property owners association after request or notice from the tenant that those devices are malfunctioning or in need of repair or replacement.

(3) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool shall inspect the pool yard enclosures, gates, and self-closing and self-latching devices on gates no less than once every thirty-one (31) days.

(4) An owner's or property owners association's duty of inspection, repair, and maintenance under this section may not be waived under any circumstances and may not be enlarged except by written agreement with a tenant or occupant of a multiunit rental complex or a member of a property owners association or as may be otherwise allowed by this chapter.

SOURCES: Laws, 2012, ch. 508, § 10, eff from and after July 1, 2012.

§ 45-43-21. Compliance with chapter; exceeding chapter standards.

(1) Except as provided by subsection (2) of this section and Section 45-43-23, a person who constructs or modifies a pool yard enclosure to conform with this chapter may not be required to construct the enclosure differently by a local governmental entity, common law or any other law.

(2) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool may, at the person's option, exceed the standards of this chapter or those adopted by the State Board of Health under Section 45-43-23. A tenant or occupant in a multiunit rental complex and a member of a property owners association may, by express written agreement, require the owner of the complex or the association to exceed those standards.

(3) A municipality may continue to require greater overall height requirements for pool yard enclosures if the requirements exist under the municipality's ordinances on July 1, 2012.

SOURCES: Laws, 2012, ch. 508, § 11, eff from and after July 1, 2012.

§ 45-43-23. Enforcement of chapter.

(1) A tenant of an owner of a multiunit rental complex, a member of a property owners association, a governmental entity, or any other person or the person's representative may maintain an action against the owner or property owners association for failure to comply with the requirements of this chapter. In that action, the person may obtain:

(a) A court order directing the owner or property owners association to comply with this chapter;

(b) A judgment against the owner or property owners association for actual damages resulting from the failure to comply with the requirements of this chapter;

(c) A judgment against the owner or property owners association for attorney's fees if the actual damages to the person were caused by the owner's or property owners association's intentional, malicious or grossly negligent actions; or

(d) A judgment against the owner or property owners association for a civil penalty of not more than Five Thousand Dollars ($5,000.00) if the owner or property owners association fails to comply with this chapter within a reasonable time after written notice by a tenant of the multiunit rental complex or a member of the property owners association; the court may award reasonable attorney's fees and costs to the prevailing party in an action brought under this subsection (1)(d).

(2) The Attorney General, a local health department, a municipality, or a county having jurisdiction may enforce this chapter by any lawful means, including inspections, permits, fees, civil fines, criminal prosecutions, injunc-

tions, and after required notice, governmental construction or repair of pool yard enclosures that do not exist or that do not comply with this chapter.

SOURCES: Laws, 2012, ch. 508, § 12, eff from and after July 1, 2012.

§ 45-43-25. Applicability to other bodies of water.

The owner of a multiunit rental complex or a property owners association is not required to enclose a body of water or construct barriers between the owner's or property owners association's property and a body of water such as an ocean, bay, lake, pond, bayou, river, creek, stream, spring, reservoir, stock tank, culvert, drainage ditch, detention pond, or other flood or drainage facility.

SOURCES: Laws, 2012, ch. 508, § 13, eff from and after July 1, 2012.

§ 45-43-27. Relation to other laws, regulations.

Except to the extent that any local or state regulation or local ordinance imposes a stricter standard, the duties established by this chapter for an owner of a multiunit dwelling project, an owner of a dwelling in a condominium, cooperative, or townhome project and a property owners association supersede those established by common law and any local or state agency regulation and local ordinances relating to duties to inspect, install, repair or maintain:

(a) Pool yard enclosures;

(b) Pool yard enclosure gates and gate latches, including self-closing and self-latching devices;

(c) Keyed dead bolts, keyless bolting devices, sliding-door handle latches, sliding-door security bars, self-latching and self-closing devices, and sliding-door pin locks on doors that open into a pool yard area and that are owned and controlled by the owner or property owners association; and

(d) Latches on windows that open into a pool yard area and that are owned and controlled by the owner or property owners association.

SOURCES: Laws, 2012, ch. 508, § 14, eff from and after July 1, 2012.

§ 45-43-29. Remedies not exclusive.

The remedies contained in this chapter are not exclusive and are not intended to affect existing remedies allowed by law or other procedures.

SOURCES: Laws, 2012, ch. 508, § 15, eff from and after July 1, 2012.

§ 45-43-31. Construction and purpose.

The provisions of this chapter shall be liberally construed to promote its underlying purpose which is to prevent swimming pool deaths and injuries in this state.

SOURCES: Laws, 2012, ch. 508, § 16, eff from and after July 1, 2012.

CHAPTER 45

Mississippi Conveyance Safety Act

Sec.
45-45-1. Short title.
45-45-3. Purpose of chapter.
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45-45-11. Persons authorized to erect, construct, alter, replace, maintain, test, remove, dismantle or wire conveyances.
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45-45-15. Application process; fee schedule; applicant qualifications and abilities; terms of license; renewal.
45-45-17. Reasons license may be suspended, revoked or subject to civil penalty.
45-45-19. Registration of conveyances.
45-45-21. Inspection, testing installation, service and maintenance of conveyances.
45-45-23. Permit required before erecting, constructing, installing or altering conveyances; application for permit; revocation or expiration of permit.
45-45-25. New conveyance installations to be performed by licensed elevator contractors; certificate of operation; annual renewal.
45-45-27. Inspection and testing of conveyances.
45-45-29. Penalty for violation of chapter.
45-45-31. Prospective application of chapter.
45-45-33. Construction of chapter.
45-45-35. Mississippi Elevator and Conveyance Fund created; source and use of monies in fund.
45-45-37. Promulgation of rules and regulations for licensing and enforcement of chapter.

§ 45-45-1. Short title.

This chapter shall be known and may be cited as the Mississippi Conveyance Safety Act.

SOURCES: Laws, 2013, ch. 405, § 1, eff from and after July 1, 2013.

§ 45-45-3. Purpose of chapter.

The purpose of this chapter is to provide for the safety of conveyance equipment and personnel, and to promote public safety awareness. This chapter establishes the minimum standards for conveyance personnel and services. The use of unsafe or defective lifting devices imposes a substantial probability of serious and preventable injury to employees and the public. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state. Conveyance personnel performing work covered by this chapter shall, by documented training and/or experience, be familiar with the operation and safety functions of the components and equipment. Training and experience shall include, but not be limited to, recognizing the safety hazards and performing the procedures required under this chapter.

SOURCES: Laws, 2013, ch. 405, § 2, eff from and after July 1, 2013.

§ 45-45-5. Equipment covered by chapter.

This chapter covers the design, construction, operation, inspection, testing, maintenance, alteration and repair of the following equipment, its associated parts, and its hoistways, except as provided by Section 45-45-7:

(a) Hoisting and lowering mechanisms equipped with a car or platform that moves between two (2) or more landings. This equipment includes, but is not limited to, the following (also see ASME A17.1/CSA B44, ASME A17.7/CSA B44.7, ASME A17.3 and ASME A18.1):

(i) Elevators;
(ii) Platform lifts;
(iii) Stairway chairlifts.

(b) Power-driven stairways and walkways for carrying persons between landings. This equipment includes, but is not limited to, the following (also see ASME A17.1/CSA B44, ASME A17.7/CSA B44.7, and ASME A17.3):

(i) Escalators;
(ii) Moving walks.

(c) Hoisting and lowering mechanisms equipped with a car that serves two (2) or more landings and is restricted to the carrying of material by its limited size or limited access to the car. This equipment includes, but is not limited to, the following (also see ASME A17.1/CSA B44, ASME A17.7/CSA B44.7, and ASME A17.3):

(i) Dumbwaiters;
(ii) Material lifts and dumbwaiters with automatic transfer devices.

SOURCES: Laws, 2013, ch. 405, § 3, eff from and after July 1, 2013.

§ 45-45-7. Equipment not covered by chapter.

(1) Equipment not covered by this chapter includes, but is not limited to, the following:

(a) Material hoists within the scope of ANSI A10.5;

(b) Man lifts within the scope of ASME A90.1;

(c) Mobile scaffolds, towers and platforms within the scope of ANSI A92;

(d) Powered platforms and equipment for exterior and interior maintenance within the scope of ANSI A120.1;

(e) Conveyors and related equipment within the scope of ASME B20.1;

(f) Cranes, derricks, hoists, hooks, jacks and slings within the scope of ASME B30;

(g) Industrial trucks within the scope of ASME B56;

(h) Portable equipment, except for portable escalators that are covered by ASME A17.1/CSA B44 and ASME A17.7/CSA B44.7;

(i) Tiering or piling machines used to move materials to and from storage located and operating entirely within one (1) story;

(j) Equipment for feeding or positioning materials at machine tools, printing presses, or similar equipment;

(k) Kip or furnace hoists;

(*l*) Wharf ramps;

(m) Railroad car lifts or dumpers;

(n) Line jacks, false cars, shafters, moving platforms and similar equipment used for installing an elevator by an elevator contractor licensed in this state.

(2) The provisions of this chapter shall not apply to any conveyance that is located in a private residence.

SOURCES: Laws, 2013, ch. 405, § 4, eff from and after July 1, 2013.

§ 45-45-9. Definitions.

For purposes of this chapter, the following terms are defined as follows, unless the context clearly indicates otherwise:

(a) "Administrator" means the person or persons designated by the Commissioner of Insurance.

(b) "ANSI" means the American National Standards Institute.

(c) "ASCE" means the American Society of Civil Engineers.

(d) "ASCE 21" means the American Society of Civil Engineers Automated People Mover Standards.

(e) "ASME" means the American Society of Mechanical Engineers.

(f) "ASME A17.1/CSA B44" means the Safety Code for Elevators and Escalators, an American National Standard.

(g) "ASME A17.3" means the Safety Code for Existing Elevators and Escalators, an American National Standard.

(h) "ASME A17.7/CSA B44.7" means the Performance-Based Safety Code for Elevators and Escalators, an American National Standard.

(i) "ASME A18.1" means the Safety Standard for Platform Lifts and Stairway Chairlifts, an American National Standard.

(j) "Automated people mover" means an installation defined as an "automated people mover" in ASCE 21.

(k) "Certificate of Operation" means a document that indicates that the conveyance has had the safety inspection and tests required by this chapter.

(*l*) "Commissioner" means Commissioner of Insurance.

(m) "Conveyance" means any elevator, dumbwaiter, escalator, moving sidewalk, platform lift, stairway chairlift or automated people mover.

(n) "Elevator" means an installation defined as an "elevator" in ASME A17.1/CSA B44.

(o) "Elevator contractor" means any sole proprietor, firm, corporation or other business entity engaged in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators and other conveyances.

(p) "Elevator helper or apprentice" means a person who works under the general direction of a licensed elevator mechanic.

(q) "Elevator inspector" means any person who specializes in the design, testing and maintenance inspection of elevators and other conveyances.

(r) "Elevator mechanic" means any person who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators or other conveyances. For the purposes of this chapter, a certified elevator technician is considered an elevator mechanic.

(s) "Escalator" means an installation defined as an "escalator" in ASME A17.1/CSA B44.

(t) "Existing installation" means an installation defined as an "installation, existing" in ASME A17.1/CSA B44.

(u) "License" means a written license issued under this chapter.

(v) "Licensee" means the elevator mechanic, elevator contractor or elevator inspector who possesses a license issued under this chapter.

(w) "Limited Elevator Contractor" means any sole proprietor, firm or company who employs individuals to carry on a business of erecting, constructing, installing, altering, servicing, repairing, or maintaining platform lifts and stairway chairlifts within any building or structure.

(x) "Limited Elevator Mechanic" means any person who is engaged in erecting, constructing, installing, altering, servicing, repairing or maintaining platform lifts and stairway chairlifts.

(y) "Moving walk" or "moving sidewalk" means an installation defined as a "moving walk" in ASME A17.1/CSA B44.

SOURCES: Laws, 2013, ch. 405, § 5, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (t) by substituting "installation defined as an" for "installation as defined as an." The Joint Committee ratified the correction at its August 1, 2013, meeting.

§ 45-45-11. Persons authorized to erect, construct, alter, replace, maintain, test, remove, dismantle or wire conveyances.

(1) Only a person who is working under the direct supervision of a licensed elevator contractor and who possesses an elevator mechanic license is authorized to erect, construct, alter, replace, maintain, test, remove, dismantle or wire from the mainline feeder terminals on the controller of any conveyance contained within buildings or structures in this state. Supervision by a licensed elevator contractor is not required for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the hoistway or wellway is demolished back to the basic support structure whereby no access is permitted to endanger the safety and welfare of a person.

(2) Only a person who possesses an elevator inspector license is authorized to inspect conveyances identified in this chapter.

SOURCES: Laws, 2013, ch. 405, § 6, eff from and after July 1, 2013.

§ 45-45-13. Promulgation of regulations for equipment, fees and licenses regulated by chapter.

(1) The Commissioner of Insurance shall promulgate regulations for the equipment, fees and licenses regulated by this chapter. The regulations shall consider the latest Safety Code for Elevators and Escalators, ASME A17.1/CSA B44; the Safety Code for Existing Elevators and Escalators, ASME A17.3; the Performance-Based Safety Code for Elevators and Escalators, ASME A17.7/CSA B44.7, the Safety Standards for Platform Lifts and Stairway Chairlifts, ASME A18.1; and Standard for the Qualification of Elevator Inspectors, ASME QEI-1.

(2) The licensing authority shall consult with engineering authorities and organizations that are concerned with standard safety codes, the rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation, and inspection of conveyances and the qualifications that are adequate, reasonable and necessary for licensing as an elevator mechanic, contractor and inspector.

(3) Exceptions and variances from the literal requirements of applicable standards and regulations may be granted in cases where an exception or variance would not jeopardize the public safety and welfare.

SOURCES: Laws, 2013, ch. 405, § 7, eff from and after July 1, 2013.

§ 45-45-15. Application process; fee schedule; applicant qualifications and abilities; terms of license; renewal.

(1) The Commissioner of Insurance shall develop and implement an application process and fee schedule for licenses designated in this chapter. The fee schedule adopted by the commissioner must be similar to those fees charged for similar services by the surrounding states.

(2)(a) Applicants for a mechanic license must demonstrate one (1) of the following qualifications and abilities:

(i) An acceptable combination of documented experience and education credits of, within the last five (5) years, not less than four (4) years' work experience in the elevator industry, whether in construction, maintenance or service and repair, or any combination thereof, as verified by current and previous employers, and satisfactory completion of a written examination approved by the administrator on the most recent applicable codes and standards;

(ii) Certificates of completion of an apprenticeship program for elevator mechanics having standards substantially equal to those of this chapter, and registered with the Bureau of Apprenticeship and Training or the United States Department of Labor.

(b) A license shall be issued to an applicant who holds a valid license from a state having standards substantially equal to those of this chapter without examination and upon verification of qualification by the administrator.

(c) Any person who furnishes the licensing authority with acceptable proof that the person has worked as an elevator constructor, maintenance or repair mechanic, upon making application for a license, shall be entitled to receive an elevator mechanic license without examination if the person has worked without direct and immediate supervision for a licensed elevator contractor for not less than four (4) years immediately before July 1, 2013. To be eligible to be licensed without examination under this paragraph, the person must make an application for licensure on or before July 1, 2014. A license is not required for an elevator helper or apprentice; however, a licensed mechanic is limited to directly supervise only three (3) helpers or apprentices.

(3) Applicants for an inspector license must meet the standards as set forth by the Commissioner of Insurance.

(4)(a) Applicants for an elevator contractor license must demonstrate that they have in their employ licensed elevator mechanic(s).

(b) An elevator contractor license may be issued to an applicant who holds an equivalent valid license from a state having standards substantially equal to those of this chapter.

(5)(a) Applicants for a limited elevator contractor license must demonstrate that they have in their employ licensed elevator mechanic(s).

(b) A limited elevator contractor license may be issued to an applicant who holds an equivalent valid license from a state having standards substantially equal to those of this chapter.

(6)(a) Except when otherwise expressly provided, licenses issued under this chapter shall be valid for two (2) years.

(b) The renewal of all licenses granted under the provisions of this section may be conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees. The courses shall be subject to approval by the licensing authority administrator and shall consist of not less than eight (8) hours of instruction that shall be attended and completed within one (1) year immediately preceding such license renewal.

(c) The commissioner, upon written request, may grant exception to or extend the time in which a licensee must comply with the continuing educational requirements of this section for reasons of poor health, military service or other reasonable or just causes.

SOURCES: Laws, 2013, ch. 405, § 8, eff from and after July 1, 2013.

§ 45-45-17. Reasons license may be suspended, revoked or subject to civil penalty.

(1) A license issued pursuant to this chapter may be suspended, revoked or subject to civil penalty by the administrator upon verification that any one or more of the following reasons exist:

(a) Any false statement as to a material matter in the application.

(b) Fraud, misrepresentation or bribery in securing a license.

(c) Failure to notify the licensing authority and the owner or lessee of an elevator or other conveyance in any condition that is not in compliance with this chapter.

(2) No license shall be suspended, revoked, denied or subject to civil penalty until after a hearing before the administrator upon notice and hearing to the licensee or applicant of at least twenty (20) days at the last known address appearing on the license or application, served personally or by registered mail. The administrator may suspend or revoke the license, deny the application, levy a civil penalty, or dismiss the proceeding.

(3) Any person, sole proprietor, firm, or corporation whose license is revoked, suspended or subject to civil penalty, or whose license application is denied, may appeal from such determination to the Commissioner of Insurance, which shall within thirty (30) days thereafter, hold a hearing, of which at least fifteen (15) days' written notice shall be given to all interested parties. The commissioner shall, within thirty (30) days after such hearing, issue a decision.

(4) Any person, sole proprietor, firm or corporation whose license is revoked suspended or subject to civil penalty, or whose license application is denied, may appeal from such determination to the Chancery Court of the First Judicial District of Hinds County, Mississippi, within twenty (20) days of the final ruling.

SOURCES: Laws, 2013, ch. 405, § 9, eff from and after July 1, 2013.

§ 45-45-19. Registration of conveyances.

(1) On or before December 31, 2014, the owner or lessee of every conveyance not exempted under this chapter shall register with the Commissioner of Insurance each conveyance owned or operated by the owner or lessee, giving the type, rated load and speed, name of manufacturer, its location, the purpose for which it is used, and such additional information as may be required.

(2) Conveyances placed in service on or after July 1, 2013, shall be registered at the time they are completed and placed in service.

SOURCES: Laws, 2013, ch. 405, § 10, eff from and after July 1, 2013.

§ 45-45-21. Inspection, testing installation, service and maintenance of conveyances.

A licensee shall inspect, test, install, service and maintain conveyances in compliance with the provisions and standards of the State Fire Prevention and Building Code.

SOURCES: Laws, 2013, ch. 405, § 11, eff from and after July 1, 2013.

§ 45-45-23. Permit required before erecting, constructing, installing or altering conveyances; application for permit; revocation or expiration of permit.

(1) A permit must be obtained before a conveyance covered by this chapter shall be erected, constructed, installed or altered within buildings or structures in this state. Where any material alteration is made, the device shall conform to applicable requirements as determined by the commissioner. A permit may be issued only to a licensed elevator contractor, and a copy of the permit shall be kept at the construction site at all times while the work is in progress.

(2) Each application for a permit shall be accompanied by copies of specifications and accurately scaled and fully dimensioned plans showing the location of the installation in relation to the plans and elevation of the building; the location of the machinery room/machinery space and the equipment to be installed, relocated or altered; all structural supporting members thereof, including foundations; and shall specify all materials to be employed and all loads to be supported or conveyed. The plans and specifications shall be sufficiently complete to illustrate all details of construction and design.

(3) Permits may be revoked for the following reasons:

(a) Where any false statement or misrepresentation as to the material facts was made in the application, plans, or specifications on which the permit was based.

(b) Where the permit was issued in error and should not have been issued in accordance with the code.

(c) Where the work detailed under the permit is not being performed in accordance with the provisions of the application, plans or specifications or with the code or conditions of the permit.

(d) Where the elevator contractor to whom the permit was issued fails or refuses to comply with a stop work order.

(4)(a) A permit expires if the work authorized by a permit is not commenced within six (6) months after the date of issuance.

(b) For good cause, an extension of the permit may be granted.

(5) A permit is not required for a repair.

(6) The commissioner may by rules and regulations establish a fee schedule for the permits and certifications issued under this section. The fee schedule must be similar to fees charged for the same services in surrounding states.

SOURCES: Laws, 2013, ch. 405, § 12, eff from and after July 1, 2013.

§ 45-45-25. New conveyance installations to be performed by licensed elevator contractors; certificate of operation; annual renewal.

(1) All new conveyance installations shall be performed by a licensed elevator contractor who must certify compliance with this chapter upon completion of the work. Before any conveyance is used, the property owner or lessee must obtain a certificate of operation. It is the responsibility of the licensed elevator contractor to complete and submit first-time registration(s) for new installations.

(2) A certificate of operation is renewable annually, except that certificates issued for platform and stairway chairlifts for private residences shall be valid for a period of three (3) years. A certificate of operation must be clearly displayed on or in each conveyance or in the machine room/machinery space for use for the benefit of code enforcement staff.

SOURCES: Laws, 2013, ch. 405, § 13, eff from and after July 1, 2013.

§ 45-45-27. Inspection and testing of conveyances.

(1) It shall be the responsibility of the owner of all new and existing conveyances located in any building or structure to have the conveyance inspected annually (ASME A17.1/CSA B44, category one) by a licensed elevator inspector who shall supply the property owner or lessee and the licensing authority with a written inspection report that describes any and all code violation. Property owners shall have thirty (30) days from the date of the published inspection report to be in full compliance with correcting the violations.

(2)(a) It shall be the responsibility of the owner of all conveyances to hire an elevator contractor or a limited elevator contractor to supervise the required tests at intervals in compliance with the ASME A17.1/CSA B44 Appendix N, ASME A18.1 and ASCE 21.

(b) All tests shall be performed by a licensed elevator mechanic.

SOURCES: Laws, 2013, ch. 405, § 14, eff from and after July 1, 2013.

§ 45-45-29. Penalty for violation of chapter.

Any owner or lessee who shall violate any of the provisions of this chapter, upon conviction thereof, shall be fined in an amount not to exceed One Thousand Five Hundred Dollars ($1,500.00).

SOURCES: Laws, 2013, ch. 405, § 15, eff from and after July 1, 2013.

§ 45-45-31. Prospective application of chapter.

The provisions of this chapter are not retroactive unless otherwise stated and equipment shall be required to comply with the applicable code at the date of its installation or within the period determined by the Commissioner of Insurance. If, upon the inspection of any device covered by this chapter, the equipment is found in dangerous condition or there is an immediate hazard to those riding or using such equipment, the administrator shall notify the owner of the condition and any corrective action taken, or required by the administrator, and shall order such alterations or additions as may be deemed necessary to eliminate the dangerous condition. Further, upon a finding of a danger to the public, the administrator may order the immediate cessation of the use of such device.

SOURCES: Laws, 2013, ch. 405, § 16, eff from and after July 1, 2013.

§ 45-45-33. Construction of chapter.

This chapter shall not be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, maintaining, erecting, constructing, installing, altering, inspecting, testing, or repairing any elevator or other related mechanism covered by this chapter for damages to person or property caused by any defect therein, nor does the state assume any such liability or responsibility therefor or any liability to any person for whatsoever reason by the enactment of this chapter or any acts or omissions arising hereunder.

SOURCES: Laws, 2013, ch. 405, § 17, eff from and after July 1, 2013.

§ 45-45-35. Mississippi Elevator and Conveyance Fund created; source and use of monies in fund.

There is created a special fund to be designated as the "Mississippi Elevator and Conveyance Fund." The fund shall consist of monies appropriated by the act of the Legislature and monies collected by the Commissioner of Insurance for licenses, fees and penalties levied pursuant to this chapter. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund. The Commissioner of Insurance may contract with a third party to assist the commissioner with carrying out the purposes of this chapter. The Commissioner of Insurance may use the monies in this fund to defray the costs of administration of this chapter, including, but not limited to, using the monies in this fund to pay a third party a reasonable fee for its services.

SOURCES: Laws, 2013, ch. 405, § 18, eff from and after July 1, 2013.

§ 45-45-37. Promulgation of rules and regulations for licensing and enforcement of chapter.

The Commissioner of Insurance shall have authority to promulgate rules and regulations for licensing and enforcement for all provisions in this chapter.

SOURCES: Laws, 2013, ch. 405, § 19, eff from and after July 1, 2013.

CHAPTER 47

DNA Data Bank

Sec.	
45-47-1.	DNA samples to be collected from persons arrested for commission or attempted commission of certain crimes of violence; destruction of sample; penalties for obtaining, receiving or disseminating information in DNA data bank without authority [Section contingent upon funding, see subsection (6).]

§ 45-47-1. DNA samples to be collected from persons arrested for commission or attempted commission of certain crimes of violence; destruction of sample; penalties for obtaining, receiving or disseminating information in DNA data bank without authority [Section contingent upon funding, see subsection (6).]

(1) Every person who is arrested for the commission or attempted commission of a crime of violence as defined in Section 97-3-2 shall provide a biological sample for DNA testing to jail or detention center personnel upon booking. The analysis shall be performed by the Mississippi Crime Lab or other entity designated by the Department of Public Safety, and the results shall be maintained by the Crime Lab according to standard protocols adopted for maintenance of DNA records in conformity to federal guidelines for the maintenance of such records.

(2)(a) A DNA sample shall be collected by an individual who is trained in the collection procedures that the Crime Laboratory uses.

(b) The clerk of the court shall notify the Crime Lab of the final disposition of criminal proceedings. The Crime Lab shall destroy the sample and delete from the database all records thereof if there is no other pending qualifying warrant or capias for an arrest or felony conviction that would require that the sample remain in the DNA data bank and:

(i) The charge for which the sample was taken is dismissed;

(ii) The defendant is acquitted at trial or convicted of a lesser-included misdemeanor offense that is not an offense listed in this section;

(iii) No charge was filed within the statute of limitations, if any; or

(iv) No conviction has occurred, at least three (3) years have passed since the date of arrest, and there is no active prosecution.

(3)(a) Any person who, without authority, disseminates information contained in the DNA data bank shall be guilty of a misdemeanor.

(b) Any person who disseminates, receives, or otherwise uses or attempts to use information in the DNA data bank, knowing that the dissemination, receipt or use is for a purpose other than as authorized by law, shall be guilty of a misdemeanor.

(c) Except as authorized by law, any person who obtains or attempts to obtain any sample for purposes of having DNA analysis performed shall be guilty of a felony.

(4)(a) Any person convicted under subsection (3)(a) shall be sentenced to a fine not to exceed Five Hundred Dollars ($500.00) or confinement in the county jail not to exceed thirty (30) days, or both.

(b) Any person convicted under subsection (3)(b) shall be sentenced to a fine not to exceed One Thousand Dollars ($1,000.00) or confinement in the county jail not to exceed six (6) months, or both.

(c) Any person convicted under subsection (3)(c) shall be sentenced to a fine not to exceed One Thousand Dollars ($1,000.00) or commitment to the custody of the Department of Corrections not to exceed two (2) years, or both.

(5) A defendant may file a motion with the court to seek destruction of the DNA sample and deletion of such information from the record under this section.

(6) This section shall not take effect unless the Legislature has provided sufficient funds for implementing the provisions of this section, including training, as certified by the Joint Legislative Budget Committee.

SOURCES: Laws, 2014, ch. 502, § 1, effective from and after July 1, 2014.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony or misdemeanor violation, see § 99-19-73.

TITLE 47

PRISONS AND PRISONERS; PROBATION AND PAROLE

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Chapter 3. Removal of Prisoners 47-3-1
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CHAPTER 1

County and Municipal Prisons and Prisoners

Sec.
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§ 47-1-1. Enforcement of sentences.

Every convict sentenced to imprisonment in the county jail, or to such imprisonment and the payment of a fine, or the payment of a fine, shall be committed to jail, and shall remain in close confinement for the full time specified for imprisonment in the sentence of the court, and in like confinement until the fine, costs and jail fees be fully paid, unless discharged in due course of law, or as hereinafter provided. But no convict shall be held in continuous confinement under a conviction for any one (1) offense for failure to pay fine and costs in such case for a period of more than two (2) years.

SOURCES: Codes, 1892, § 775; 1906, § 837; Hemingway's 1917, §§ 4015, 4030; 1930, § 4058; 1942, § 7899; Laws, 1908, ch. 109.

Cross References — Duty of sheriff relative to prisoners, see §§ 19-25-63 et seq.
Credit allowed for labor of convicts, see § 47-1-47.
Sentence upon conviction for vagrancy, see § 97-35-41.
Sentence upon two or more convictions, see § 99-19-21.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2. Removal of prisoner.
3. Length of confinement.

1. In general.

Code sections associated with section containing provision, stricken by Amendatory Act, that no convict shall be credited with wages while in jail and not at work held to entitle convict to credit of $1 on his fine and costs for each day spent in jail when ready, able, and willing to work, regardless of title of amendatory act, "An Act to amend [such section] so as to credit convicts with time served in jail." Ex parte Jackson, 177 Miss. 509, 171 So. 545 (1937).

Duplicate detention warrant held sufficient authority for convict's detention. Ex parte Moody, 121 Miss. 313, 83 So. 529 (1920).

Court's failure to comply with statute does not relieve accused from liability for imprisonment on failure to pay fine. Buck v. State, 103 Miss. 276, 60 So. 321 (1913).

This section [Code 1942, § 7899], in providing for imprisonment until payment of the cost of prosecution, does not violate a constitutional prohibition of imprisonment for debt. Ex parte McInnis, 98 Miss. 773, 54 So. 260 (1911).

2. Removal of prisoner.

Sheriff had no authority to remove prisoner sentenced to imprisonment in county jail where offense was committed to jail of nonadjoining county. Ex parte Buck, 104 Miss. 661, 61 So. 651 (1913).

3. Length of confinement.

Under the equal protection clause of the Fourteenth Amendment, an indigent, convicted in a state court and sentenced to the maximum term of imprisonment specified by statute and payment of a fine and court costs, the judgment also directing, pursuant to statute, that if the defendant was in default of the monetary payment at the expiration of his prison term, he should remain in jail to "work off" the fine at the statutory rate, may not be continued in confinement beyond the maximum term specified by statute because of his failure to satisfy the monetary provisions of the sentence, either with regard to the fine or with regard to the costs. Williams v. Illinois, 52 Ohio Op. 2d 281, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970).

Although incarceration of indigent for involuntary failure to pay fine and court costs beyond the maximum imprisonment prescribed by state law for the offense was held to be violative of the Federal Constitution, the state can institute methods, other than incarceration, to enforce the collection of unpaid fines. Wade v. Carsley, 433 F.2d 68 (5th Cir. 1970).

However, it had earlier been held that the imprisonment of an indigent for failure to pay a fine did not constitute cruel and unusual punishment, where the indigent after pleading guilty to a misdemeanor charge was sentenced to a jail term and to pay a fine, and after serving her jail term was unable to pay the fine because she was indigent, in view of Code 1942, § 7899 which limits the time of confinement for failure to pay a fine for any one offense to 2 years. Wade v. Carsley, 221 So. 2d 725 (Miss. 1969).

That more than two years had elapsed since imposition of fine and sentence, part of which had been unlawfully suspended by county judge, held not to relieve defendant from serving unsatisfied portion on ground that statute provided that no convict should be held in continuous confinement under conviction for any one offense for failure to pay fine and costs in such case for period of more than two years, where defendant was not in continuous confinement under suspended portion of sentence. Cameron v. Thompson, 178 Miss. 434, 173 So. 422 (1937).

RESEARCH REFERENCES

Am Jur. 22A Am. Jur. 2d, Criminal Law §§ 1319, 1320 et seq.

CJS. 24 C.J.S., Criminal Law § 1570.

§ 47-1-3. County convicts; duty of board of supervisors.

It is the imperative duty of the board of supervisors in each county in this state to require each convict sentenced to imprisonment in the county jail and the payment of a fine and costs, or to imprisonment and payment of costs, or to payment of fine and costs, to work out the sentence on the county convict farm or on the public roads or other public works of the county, or in a contiguous county, as herein provided. But any convict who is sentenced to the payment of a fine and costs and who pays such fine and costs shall thereby be relieved from working out such fine and costs, but the payment in full of such fine and costs shall not relieve such convict from working out the full time of his imprisonment as adjudged in his sentence. The board of supervisors of any county, however, may by an order spread upon its minutes, giving the reason therefor, and with the approval of the circuit judge of the district, discharge any aged or infirm convict upon his making an affidavit of his insolvency and inability to pay the fine and costs, and filing same with the clerk of the board of supervisors at any time after the expiration of his imprisonment.

SOURCES: Codes, 1892, § 814; 1906, § 870; Hemingway's 1917, § 4030; 1930, § 4059; 1942, § 7900; Laws, 1900, ch. 100; Laws, 1906, ch. 100; Laws, 1908, ch. 168; Laws, 1936, ch. 269.

Cross References — Constitutional prohibition against county convicts being hired or leased, see Miss. Const. Art. 10, § 226.

Jurisdiction and powers of boards of supervisors generally, see § 19-3-41.

Working roads with convicts, see § 65-7-113.

Acquisition of facilities for restitution centers, see § 99-37-19.

JUDICIAL DECISIONS

1. In general.

Convict, sentenced to imprisonment in county jail and payment of fine and costs, being required by statute to work each day that he is able, is entitled to credit of $1 for each day on which he is physically able and willing to work until full payment of fine and costs, though county board of supervisors fails to furnish him work and facilities or means therefor, as required by statute. Ex parte Jackson, 177 Miss. 509, 171 So. 545 (1937).

Code sections associated with section containing provision, stricken by amendatory act, that no convict be credited with wages while in jail and not at work, held to entitle convict to credit of $1 on fine and costs for each day spent in jail when ready, able, and willing to work, regardless of title to amendatory act. Ex parte Jackson, 177 Miss. 509, 171 So. 545 (1937).

Prisoner cannot be released on habeas corpus before expiration of period sufficient to pay fine at maximum statutory allowance. Morris v. Waldrop, 151 Miss. 553, 118 So. 621 (1928).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 47-1-3 makes it duty of board of supervisors in each county to require each convict sentenced to imprisonment in county jail and payment of fine and costs, or to imprisonment and payment of costs, or to payment of fine and costs, to work out sentence on county convict farm or on public roads or at other public works of sentencing county or contiguous county. Simmons, Jan. 11, 1993, A.G. Op. #92-0988.

Where inmate is physically willing and able to work, inmate is entitled to credit against fine and cost in amount of $10 per day, until such fine and cost are fully paid. Stewart, May 20, 1993, A.G. Op. #93-0255.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-5. County convicts; board of supervisors may lease or buy suitable lands.

In order to carry out the provisions of Section 47-1-3, the board of supervisors of each county in this state are authorized and directed, whenever it may be necessary to buy or lease a sufficient number of acres of land within reasonable and convenient distance of the county jail to be used by the county as a county convict farm. They are also authorized to make any necessary improvements thereon, such as erecting necessary and convenient buildings, clearing, terracing and ditching and leveeing, or otherwise repairing and improving such farm, so that it may be suitable to be used as a farm upon which to work the convicts committed to the county jail, and they shall employ a competent and suitable person to be known as foreman of county farm to superintend such convict farm and manage it and to work the convicts sentenced to the county jail thereon. The board of supervisors in each county shall also have full and complete authority to buy, or rent necessary mules or horses, tractors, farming tools and implements and all other necessary things incidental to the successful operation of such convict farm in such numbers and amounts as they may reasonably contemplate will be necessary to successfully operate such farm, having in view, first, the continuous employment of all the convicts able to work thereon at remunerative labor, and second, the operation of said farm in the most economical manner consistent with the continuous working of such convicts.

SOURCES: Codes, 1892, § 814; 1906, § 870; Hemingway's 1917, § 4030; 1930, § 4060; 1942, § 7901; Laws, 1900, ch. 100; Laws, 1906, ch. 100; Laws, 1908, ch. 168.

Cross References — Constitutional prohibition against hiring or leasing county convicts, see Miss. Const. Art. 10, § 226.

Taxation of county farm lying within drainage district, see § 51-31-103.

JUDICIAL DECISIONS

1. In general.

The operation of a county convict farm is a governmental rather than a proprietary function and for that reason no tort liability lay against the county or the board of supervisors as an entity where negligence of the farm superintendent resulted in serious injuries to a minor prisoner, even though Code 1942, § 7904 specifically required the board of supervisors to establish all proper regulations for the working, guarding, and safekeeping of prisoners. Roberts v. Williams, 456 F.2d 819 (5th Cir. 1971), cert. denied, 404 U.S. 866, 92 S. Ct. 83, 30 L. Ed. 2d 110 (1971).

ATTORNEY GENERAL OPINIONS

Section 47-1-5 clearly gives a county board of supervisors sole authority to create, control, and maintain a county convict farm. Best, July 8, 1996, A.G. Op. #96-0343.

§ 47-1-7. Boards of supervisors of contiguous counties may own farm jointly; working prisoners in another county.

In any county where there are not a sufficient number of convicts to make it economically feasible for such county to own and operate a county convict farm as provided for by law, the board of supervisors of any such county may agree with the board of supervisors of any contiguous county to own and operate in common with such contiguous county, a county convict farm upon which prisoners of both such counties may be detained and required to work. In like manner the board of supervisors of any county in which there are not a sufficient number of convicts to make it economically feasible to own and operate a county convict farm, may make similar arrangements with any city, town or village within said county to own and operate said farm in connection with said city, town or village. In any county where there are not a sufficient number of convicts to make it economically feasible for such county to own a farm or to own and operate a farm with a contiguous county or with a city or town, the board of supervisors of such county may contract with the board of supervisors of any contiguous county or with any county in the same circuit or chancery court district, to have its prisoners worked by the contiguous county or counties in the same circuit or chancery court district upon payment made to the board of supervisors of such contiguous county or counties in the same circuit or chancery court district for the purpose of detaining and working such prisoners. The terms of such a contract are to be agreed upon by and between the two contracting boards and the same shall not be in violation of the law. Where the board of supervisors of one county so contracts to work convicts of another county, all the provisions of Sections 47-1-1 through 47-1-37,. Sections 47-1-41, 47-1-45, 47-1-47, and 47-1-61, Mississippi Code of 1972, and Section 226 of the Constitution in regard to the working of convicts shall apply to the convicts contracted for as herein provided; and the name of the convict or convicts may be entered on the jail docket of the county contracting to detain and work the convict or convicts, together with all other information required by Section 47-1-21.

SOURCES: Codes, Hemingway's 1917, § 4038; 1930, § 4062; 1942, § 7903; Laws, 1908, ch. 109; Laws, 1936, ch. 269; Laws, 1960, ch. 283.

RESEARCH REFERENCES

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-9. Convicts may be worked on public roads or other county public works.

In any county where it is clearly more advantageous to the county to work the county convicts or some of them on the public roads of the county, or on other works of the county exclusively public in their character, the board of supervisors shall have the authority so to order, and in such cases the board shall establish all proper regulations for the working, guarding, safekeeping, clothing, housing and subsistence of convicts while so working, and shall provide all the necessary equipment for such purpose. The board shall establish regulations for the discipline of convicts on said works, and on county farms, when a convict is persistently idle or refractory, and may enforce such regulations by penalties.

SOURCES: Codes, 1892, § 784; 1906, § 843; Hemingway's 1917, § 4018; 1930, § 4063; 1942, § 7904; Laws, 1908, ch. 109.

Cross References — Constitutional authority to work convicts on public roads, see Miss. Const. Art. 4, § 85.

Constitutional prohibition against hiring county convicts, see Miss. Const. Art. 10, § 226.

Leasing or hiring convicts unlawful, see § 47-1-19.

Working of municipal prisoners, see § 47-1-41.

Working state prisoners on certain roads, see §§ 47-5-129, 47-5-131.

Use of offenders as servants prohibited, see § 47-5-137.

Use of prisoners in county jails to pick up trash, see §§ 47-5-431 et seq.

Use of prisoners in county jails to maintain certain historic cemeteries and serve food in conjunction with nonprofit organizations, see § 47-5-441.

Working public roads with county convicts, see § 65-7-113.

JUDICIAL DECISIONS

1. In general.

The operation of a county convict farm is a governmental rather than a proprietary function and for that reason no tort liability lay against the county or the board of supervisors as an entity where negligence of the farm superintendent resulted in serious injuries to a minor prisoner, even though Code 1942, § 7904 specifically required the board of supervisors to establish all proper regulations for the working, guarding, and safekeeping of prisoners. Roberts v. Williams, 456 F.2d 819 (5th Cir. 1971), cert. denied, 404 U.S. 866, 92 S. Ct. 83, 30 L. Ed. 2d 110 (1971).

The superintendent of a county convict farm was negligent and liable in tort for his failure to instruct a trustee guard in the proper and safe handling of firearms, where the shotgun which the guard was carrying accidentally discharged and caused serious injuries to a minor prisoner. Roberts v. Williams, 456 F.2d 819 (5th Cir. 1971), cert. denied, 404 U.S. 866, 92 S. Ct. 83, 30 L. Ed. 2d 110 (1971).

Convict held entitled to credit of $1 for each day physically able and willing to work, although supervisors failed to furnish him work. Ex parte Jackson, 177 Miss. 509, 171 So. 545 (1937).

ATTORNEY GENERAL OPINIONS

Based on Section 47-1-9, as a general rule, county inmates may not be worked on private property, even if such work benefits the public. However, the Mississippi Emergency Management Law, codified at § 33-15-1, et. seq., is an exception to the general rule if the governing authorities determine that an emergency exists and there is a need to use the services of prisoners to protect life or property. Price, December 13, 1996, A.G. Op. #96-0793.

Absent an emergency declaration, the use of county inmates for labor by the sheriff must be effected on projects "exclusively public in nature." Waggoner, Nov. 30, 2001, A.G. Op. #01-0718.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 162 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-11. Convicts physically unable shall not be required to work.

If any convict committed to the county jail is physically unable to do any kind of manual labor, then, upon the certificate of the county health officer or physician designated by the board of supervisors of the county, to this effect, such convict shall not be required, during the period of such physical disability, to perform manual labor on the convict farm. But all convicts shall be required each day to do and perform such work as they are physically able to do and perform and which will not impair the health of such convict, or as is not inhumane to require of him.

SOURCES: Codes, 1930, § 4064; 1942, § 7905; Laws, 1908, ch. 109.

Cross References — Credit for each day of imprisonment for convicts unable to work, see § 41-1-47.

JUDICIAL DECISIONS

1. In general.

A sheriff is only a custodian of his prisoners and he cannot release any prisoner for the purpose of allowing the prisoner to seek treatment in a hospital. Hegwood v. State, 213 Miss. 693, 57 So. 2d 500 (1952).

A prisoner who was convicted of unlawful possession of liquors and who was released by the sheriff to allow the prisoner to seek private hospital care, was an escapee and he was not entitled to credit upon his sentence for fine and costs for the time spent away from jail. Hegwood v. State, 213 Miss. 693, 57 So. 2d 500 (1952).

Declaration against sheriff and surety for maltreatment of prisoner resulting in prisoner's death, in that sheriff took deceased into custody knowing he was ill and placed him at work on public roads, held insufficient in not sufficiently charging that prevention of deceased's wife from giving him food and medicine while in jail caused death and in not charging he did not have medical attention and wholesome food. State ex rel. Trigg v. West, 171 Miss. 203, 157 So. 81 (1934).

RESEARCH REFERENCES

ALR. Rights of prisoners under Americans with Disabilities Act and Rehabilitation Act. 163 A.L.R. Fed. 285.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-13. By contract county may work under guard certain prisoners before indictment and conviction.

Any person being held in the county jail in default of bail to await trial, except those held for treason, murder, arson, or rape, and except such as the sheriff may deem it improper to let out, may on application to the sheriff of the county, be allowed to work on the county farm or on the public roads or other county public works as other convicts are worked and at the same wage. The board of supervisors shall settle with prisoners so working at their regular meetings monthly. But if it appears that it is not to the best interest of the county to work such prisoners, the board may decline at any time to employ them.

SOURCES: Codes, 1892, § 808; 1906, § 864; Hemingway's 1917, § 4040; 1930, § 4068; 1942, § 7909.

JUDICIAL DECISIONS

1. In general.

Pretrial detainee's failure to receive compensation for his work on private property, over and above compensation he actually received, did not constitute deprivation of cognizable property right under §§ 47-1-13 and 47-1-21. Brooks v. George County, 84 F.3d 157 (5th Cir. 1996), cert. denied, 519 U.S. 948, 117 S. Ct. 359, 136 L. Ed. 2d 251 (1996).

The inmate showed no property interest or legal right for payment for the work that he performed while incarcerated for civil contempt so as to establish a deprivation of a property without due process of law under the Fourteenth Amendment because Miss. Code Ann. § 47-1-13 required payment for work performed by pretrial detainees, and the inmate was not a pretrial detainee; further, Miss. Code Ann. § 47-1-47 required credit for assessed fines and penalties based on work performed by those convicted of crimes, and the inmate was not working off an assessed fine or penalty. Carite v. Hinds County, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 50112 (S.D. Miss. July 21, 2006).

Pretrial detainee's failure to receive compensation for his work on public private property constituted deprivation of cognizable property right under §§ 47-1-13 and 47-1-21 whereby pretrial detainee who is permitted to work on public property must be paid same wages as other prisoners. Brooks v. George County, 84 F.3d 157 (5th Cir. 1996), cert. denied, 519 U.S. 948, 117 S. Ct. 359, 136 L. Ed. 2d 251 (1996).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 178, 179.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-15. Deductions from sentence for efficient work.

Any convict working under the direction of the board of supervisors who renders efficient services and complies with all necessary rules and regulations may have deducted from the term of his imprisonment one-fourth (¼) thereof.

SOURCES: Codes, 1892, § 783; 1906, § 842; Hemingway's 1917, § 4017; 1930, § 4066; 1942, § 7907; Laws, 1908, ch. 109; Laws, 1932, ch. 199.

JUDICIAL DECISIONS

1. In general.

Where appellant was sentenced to consecutive four-year sentences for armed robbery and attempted armed robbery in May 2000, the court did not have authority to grant his motion for a reduction of sentence filed in October 2004; there was no question that the term during which the circuit court sentenced appellant expired in that four-year time period, and as such, the circuit court lacked authority to suspend his sentence. Walters v. State, 933 So. 2d 313 (Miss. Ct. App. 2006).

Former portion of statute which authorized the board of supervisors to commute one half of the term of imprisonment of a prisoner who was crippled or incapacitated was unconstitutional as an infringement upon the pardoning power vested in the governor. Whittington v. Stevens, 221 Miss. 598, 73 So. 2d 137 (1954).

A sheriff is only a custodian of his prisoners and he cannot release any prisoner for the purpose of allowing the prisoner to seek treatment in a hospital. Hegwood v. State, 213 Miss. 693, 57 So. 2d 500 (1952).

A prisoner who was convicted of unlawful possession of liquors and who was released by the sheriff to allow the prisoner to seek private hospital care, was an escapee and he was not entitled to credit upon his sentence for fine and costs for the time spent away from jail. Hegwood v. State, 213 Miss. 693, 57 So. 2d 500 (1952).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 218-221.
CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-17. When convict not credited with wages.

No convict shall be credited with any wages during the time of his or her escape; and if any convict escapes while being worked on a public road, or works or county farm, he or she may be pursued and retaken by any person, or officer authorized to make arrests, or board, or any one entitled to the custody or services of said convict; and when retaken such convict shall be required to work out the balance of his term of hire, not counting the period of such escape, even if the term of imprisonment and the time for which such convict was first hired had expired before the recapture. Such convict shall be liable to indictment for such escape and liable to the same punishment as for an escape from the custody of the county jail.

SOURCES: Codes, 1906, § 873; Hemingway's 1917, § 4032; 1930, § 4067; 1942, § 7908; Laws, 1908, ch. 109; Laws, 1932, ch. 246.

Cross References — Escape and recapture of county convicts, see § 97-9-43.

RESEARCH REFERENCES

Am Jur. 27A Am. Jur. 2d, Escape § 27.
CJS. 72 C.J.S., Prisons and Rights of Prisoners § 149.

§ 47-1-19. Leasing or hiring convicts unlawful; lawful public service work.

(1) It is unlawful for any county-housed state inmate or county prisoner or prisoners to be leased or hired to any individual or corporation for any purpose whatsoever. Nor shall they be worked under any contractor; but in working them on county farms, or on the public roads or on any other work, which work must be of an exclusively public character, they shall be under exclusive official control and management.

(2)(a) It is lawful for a state, county or municipality to provide prisoners for public service work for nonprofit charitable organizations as defined under Section 501(c)(3) of the Internal Revenue Code if that nonprofit charitable organization provides food to charities. In addition, it is lawful for a state, county or municipality to provide prisoners for public service work for churches according to criteria approved by the Department of Corrections.

(b) The prisoners participating in the public service work under paragraph (a) shall remain under the exclusive control and management of the county or municipality.

(c) A prisoner performing public service work under this subsection shall be entitled to earned credits as provided under this chapter.

SOURCES: Codes, Hemingway's 1917, §§ 4014, 4016; 1930, § 4057; 1942, § 7898; Laws, 1908, ch. 109; Laws, 1997, ch. 383, § 1; Laws, 2005, ch. 377, § 1; Laws, 2008, ch. 364, § 1, eff from and after July 1, 2008.

Cross References — Constitutional prohibition against hiring county convicts, see Miss. Const. Art. 10, § 226.

Prisoners permitted to work on public roads or other public works, see § 47-1-9.

Working of municipal prisoners, see § 47-1-41.

Use of offenders as servants prohibited, see § 47-5-431 et seq.

User of prisoners in county jails to pick up trash, see §§ 47-5-431 et seq.

Use of prisoners in county jails to maintain certain historic cemeteries and serve food in conjunction with nonprofit organizations, see § 47-5-441.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 47-1-19 prohibits agreement to hire out prisoners to HUD subcontractor. Best, Feb. 18, 1993, A.G. Op. #92-0940.

Prisoners may not generally be worked on private property, except a municipality may provide prisoners for public service work for nonprofit charitable organizations to provide food to charities, and prisoners may be worked on private property during emergency situations pursuant to the Mississippi Emergency Management Law. Pickens, July 3, 1997, A.G. Op. #97-0365.

A private corporation may not employ county prisoners to provide food services for the jail in which such prisoners are incarcerated even if such prisoners are compensated for such work. McWilliams, July 25, 1997, A.G. Op. #97-0437.

A county prisoner under the supervision and charge of the sheriff, may not, with the sheriff's approval, wash and clean the private automobile of a constable that is used by the constable in the performance of his official duties. Manning, September 4, 1998, A.G. Op. #98-0542.

County inmates may not voluntarily perform work for private individuals on private property, such as personal automobiles or private land. Huffman, September 4, 1998, A.G. Op. #98-0547.

County prisoners may not be used to wash and clean vehicles owned by private citizens, even if for a nominal consideration. Griffith, November 25, 1998, A.G. Op. #98-0726.

A county board of supervisors is not authorized to include in a request for proposals to pick up and dispose of garbage any language regarding the county providing prisoners to pick up the garbage. Shepard, Feb. 18, 2000, A.G. Op. #2000-0069.

When a government official leases or hires out inmate labor to a private citizen or company, he is guilty of a violation of the statute. McLeod, March 17, 2000, A.G. Op. #2000-0142.

Absent an emergency declaration, the use of county inmates for labor by the sheriff must be effected on projects "exclusively public in nature." Waggoner, Nov. 30, 2001, A.G. Op. #01-0718.

County inmates in the custody of the sheriff would not be allowed to work on properties of aa nonprofit charitable organization that does not provide food to charities. Griffith, Sept. 26, 2003, A.G. Op. 03-0496.

Whether or not any specific organization is a nonprofit charitable organization that provides food to charities is a factual determination that cannot be made by official opinion. Assuming that a County Community Action Program meets the requirements of this section, then the county inmates in the custody of the sheriff would be allowed to work on such properties. Griffith, Oct. 30, 2003, A.G. Op. 03-0567.

County inmates may not be allowed to perform "grass cutting" for any churches and/or nonprofit charitable organizations as defined under Section 501(c)(3) of the Internal Revenue Code. Meadows, Oct. 28, 2005, A.G. Op. 05-0422.

If it is determined that an organization that provides shelter for battered women and children has indeed obtained 501(c)(3) status as a nonprofit charitable organization, the sheriff can utilize county inmates for requested construction purposes, provided those inmates are under the exclusive control and management of the sheriff. Lawrence, Dec. 16, 2005, A.G. Op. 05-0618.

Section 47-1-19 does not establish work programs, but merely recognizes that inmates will be worked when sentenced to jail. Once sentenced to jail, it is up to the custodian of the jail to determine whether and when to work the inmate in a public service work program. Nowak, July 28, 2006, A.G. Op. 06-0268.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-21. Sheriff to keep a jail docket; what to contain.

The sheriff of each county shall keep a well bound alphabetical jail docket. In it he shall promptly enter under the proper initial the name, age, color and sex of each convict, the date of his or her commitment, each day worked on the county farm, time required to be served and amount of fine and costs and the jail fees charged against the prisoner and the date of discharge.

The sheriff shall submit his docket to the board of supervisors at each of their regular meetings, and the same shall be examined carefully by the president of the board, and by any other members who desire to examine the same, in the presence of the board while in session.

SOURCES: Codes, 1892, § 800; 1906, § 858; Hemingway's 1917, § 4024; 1930, § 4071; 1942, § 7912; Laws, 1908, ch. 109.

Cross References — Jail docket generally, see § 19-25-63.

JUDICIAL DECISIONS

1. In general.

Pretrial detainee's failure to receive compensation for his work on private property, over and above compensation he actually received, did not constitute deprivation of cognizable property right under §§ 47-1-13 and 47-1-21. Brooks v. George County, 84 F.3d 157 (5th Cir. 1996), cert.

denied, 519 U.S. 948, 117 S. Ct. 359, 136 L. Ed. 2d 251 (1996).

Pretrial detainee's failure to receive compensation for his work on public private property constituted deprivation of cognizable property right under §§ 47-1-13 and 47-1-21 whereby pretrial detainee who is permitted to work on public property must be paid same wages as other prisoners. Brooks v. George County, 84 F.3d 157 (5th Cir. 1996), cert. denied, 519 U.S. 948, 117 S. Ct. 359, 136 L. Ed. 2d 251 (1996).

ATTORNEY GENERAL OPINIONS

The jail docket may be computerized, but a copy should be printed and kept in a bound volume. Womack, Apr. 18, 2003, A.G. Op. 03-0176.

A sheriff's public "Jail Docket" is for the purpose of maintaining a record of individuals housed on criminal charges. The identity of an individual housed because of a civil commitment due to mental or drug and alcohol proceedings is not required to be entered in the "Jail Docket," and the sheriff may maintain a separate "Mental Commitment" docket. Maples, March 2, 2007, A.G. Op. #07-00073, 2007 Miss. AG LEXIS 77.

§ 47-1-23. The sexes to be kept separate.

It shall be unlawful for convicts of different sexes to be confined or worked together.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art. 3 (15); 1857, ch. 6, art. 131; 1871, § 237; 1880, § 3152; 1892, § 789; 1906, § 874; Hemingway's 1917, §§ 4033, 4034; 1930, § 4072; 1942, § 7913; Laws, 1908, chs. 109, 169; Laws, 1968, ch. 552, § 3, eff from and after passage (approved April 29, 1968).

Cross References — Constitutional authority for separation of the sexes in prisons, see Miss. Const. Art. 10, § 225.

Duty of sheriffs to provide separate rooms for the sexes, see § 19-25-71.

Separation of sexes in municipal prisons, see § 47-1-39.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 29, 30.

§ 47-1-25. Officers to have access to convicts.

Each county officer or officers, for any district of a county shall at all times have free access to convicts in the custody of any official for the purpose of investigating their condition and treatment. The sheriff or his deputies shall visit the convict camp or county farms where the convicts of his county are kept or worked at least once in every month and more often if necessary. He shall make a thorough inspection and investigation of the treatment of convicts and report the same in writing to the board of supervisors. For failure to perform duty in this respect the board of supervisors may fine the sheriff Twenty-five Dollars ($25.00).

SOURCES: Codes, 1892, § 799; 1906, § 857; Hemingway's 1917, § 4023; 1930, § 4073; 1942, § 7914; Laws, 1908, ch. 109.

ATTORNEY GENERAL OPINIONS

When a convict has been placed on the county farm or road camp to work out a sentence, such convict comes under the immediate jurisdiction of the foreman or guard appointed by the board for that purpose and subject to the rules and regulations laid down by the board of supervisors. The sheriff loses direct control of the convict, but it is his duty, under the law, to keep up with the prisoners on such farms and in such camps in a supervisory way and see that they are being worked and treated in accordance with the regulations promulgated by the board. This appears to be the only duty imposed upon the sheriff by this section. Ops Atty Gen, 1933-35, p. 48.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 23, 24-28, 85, 87, 91.

24 Am. Jur. Proof of Facts 3d 467, Proof of Unconstitutional Prison Conditions.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 14, 24, 25, 59, 63-65, 68, 70, 79, 80, 116.

§ 47-1-27. Maltreatment forbidden.

An official, or guard, or other employee, having the custody of any county prisoner, or any official or employee of the county having custody of any county prisoner, who shall maltreat or abuse any such convict, or who shall knowingly permit the same to be done, or who being under duty to provide sufficient and wholesome food, clothing, shelter, bathing facilities, or medical attention to such convict, shall wilfully fail to furnish the same to such convict, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than Ten Dollars ($10.00) nor more than Five Hundred Dollars ($500.00), or shall be imprisoned not less than one (1) month, or shall suffer both such fine and imprisonment, in the discretion of the court, and it shall be the duty of the judge of the circuit court of such county to so charge the grand jury.

SOURCES: Codes, 1906, § 877; Hemingway's 1917, § 4035; 1930, § 4074; 1942, § 7915; Laws, 1896, ch. 88; Laws, 1908, ch. 109.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

In order to establish a violation of the cruel and unusual punishment clause based on a claim of excessive use of force by prison officers, a prisoner who shows unnecessary and wanton infliction of pain is not required to show serious injury, given that (a) the absence of serious injury, although relevant to the inquiry as to whether the use of force violated the Eighth Amendment, does not end that inquiry, and (b) contemporary standards of decency are always violated when prison officials maliciously and sadistically use force to cause harm, regardless of whether significant injury is evident. Hudson v. McMillian, 503 U.S. 1, 112 S. Ct. 995, 117 L. Ed. 2d 156 (1992), on remand, 962 F.2d 522 (5th Cir. 1992).

Blows allegedly directed at the inmate by the security officers were not de minimis for Eighth Amendment purposes, and the extent of the inmate's alleged injuries provided no basis for dismissal of the inmate's claim against the officers under 42 USCS § 1983. Hudson v. McMillian, 503 U.S. 1, 112 S. Ct. 995, 117 L. Ed. 2d 156 (1992), on remand, 962 F.2d 522 (5th Cir. 1992).

For purposes of establishing whether prison officials have inflicted unnecessary and wanton pain and suffering on a prisoner so as to violate the prisoner's rights under the cruel and unusual punishment clause, where the officials are accused of using excessive physical force, the core judicial inquiry is whether force was applied (a) in a good-faith effort to maintain or restore discipline, or (b) maliciously and sadistically to cause harm. Hudson v. McMillian, 503 U.S. 1, 112 S. Ct. 995, 117 L. Ed. 2d 156 (1992), on remand, 962 F.2d 522 (5th Cir. 1992).

Declaration against sheriff and surety for maltreatment of prisoner resulting in prisoner's death, in that sheriff took deceased into custody knowing he was ill and placed him at work on public roads, held insufficient in not sufficiently charging that prevention of deceased's wife from giving him food and medicine while in jail caused death and in not charging he did not have medical attention and wholesome food. State ex rel. Trigg v. West, 171 Miss. 203, 157 So. 81 (1934).

A convict committed to a county convict farm cannot be whipped for discipline in the absence of authority from the board of supervisors for the infliction of such punishment, under Acts 1894 ch 76 §§ 23 and 24. Davis v. State, 81 Miss. 56, 33 So. 286 (1902).

ATTORNEY GENERAL OPINIONS

Prisoners' privileges of mail, telephone, visitation, access to law library and recreation are not addressed by state statute. Mullins, March 27, 1998, A.G. Op. #98-0159.

A sheriff may provide a meal from the county jail at no cost to the members of the grand jury as part of their inspection of the county jail. Caranna, April 21, 2000, A.G. Op. #2000-0207.

RESEARCH REFERENCES

ALR. Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

Attorney's fees awards under § 803(d) of Prison Litigation Reform Act (42 U.S.C.S. § 1997e(d). 165 A.L.R. Fed. 551.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 23 et seq.

22 Am. Jur. Trials 1, Prisoners' Rights Litigation.

24 Am. Jur. Proof of Facts 3d 467, Proof of Unconstitutional Prison Conditions.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 14, 24, 25, 26, 50, 59, 63-65, 68, 70, 79, 80, 116, 123, 124.

§ 47-1-29. Complaint of convicts investigated.

On complaint by or on behalf of any convict to any county or county district officer, that such convict had been improperly treated in any respect, it shall be the duty of such officer at once to investigate the complaint, and if it is believed to be well founded, to report the facts to the president of the board of supervisors, or to the board in session. Upon such report the board shall cite the person complained of to appear before it, and such action shall be taken by the board as shall be proper.

SOURCES: Codes, 1880, § 3180; 1892, § 798; 1906, § 856; Hemingway's 1917, § 4022; 1930, § 4075; 1942, § 7916: Laws, 1908, ch. 109.

Cross References — Judicial powers of board of supervisors, see § 19-3-39.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 23 et seq., 181 et seq.

24 Am. Jur. Proof of Facts 3d 467, Proof of Unconstitutional Prison Conditions.

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 127.

§ 47-1-31. Grand jury to examine records and treatment of prisoners.

Each grand jury which is impaneled shall examine the records of county prisoners and their treatment and condition and report the same to the court.

SOURCES: Codes, 1906, § 871; Hemingway's 1917, § 4031; 1930, § 4076; 1942, § 7917; Laws, 1896, ch. 133; Laws, 1908, ch. 109; Laws, 1983, ch. 499, § 25, eff from and after July 1, 1983.

Cross References — Personal inspection of county jail by grand jury, see § 13-5-55.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Grand Jury §§ 25 et seq.

CJS. 38A C.J.S., Grand Juries §§ 88 et seq.

§ 47-1-33. Each convict to have evidence of term of sentence and amount of fine.

The sheriff on receiving each convict shall furnish such convict with a certificate showing the amount of the fine and costs, as far as the costs are then known, the beginning and length of his term of imprisonment. The convict shall be allowed to have and keep such certificate on or about his person, if he so desires.

SOURCES: Codes, 1892, § 806; 1906, § 862; Hemingway's 1917, § 4027; 1930, § 4077; 1942, § 7918; Laws, 1908, ch. 109.

JUDICIAL DECISIONS

1. In general.

Convict manager cannot detain convict without warrant although there has been a conviction and sentence has not expired. Ex parte Moody, 104 Miss. 836, 61 So. 741 (1913).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 23-28.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17-21, 23-25, 128, 129.

§ 47-1-35. County farms operating at loss, disposition of.

(1) The board of supervisors of any county that now maintains and operates a county penal farm, commonly known as a "county farm," which farm contains more than five hundred (500) acres and less than six hundred (600) acres of land, which said farm has been continuously operating at a loss to the county for a period of five (5) years or more, and provided said county contains at least four hundred (400) square miles of territory and less than four hundred twenty-five (425) square miles of territory within its boundaries, shall sell, at public sale after receiving bids as required by law for the letting of public contracts, to the highest and best bidder for cash, said county farm; provided, however, that the said board shall retain for the benefit of the county and shall reserve from said sale, at least one-half (½) of the mineral rights and interests in said lands, with full right in the said board, in its discretion, to lease said retained and reserved mineral interests and rights, to the highest and best bidder after receiving bids therefor in the same manner, at the same or any other time.

(2) Any and all amounts received from such sale of said lands and from such lease of said mineral interests or rights, shall be, on receipt by the board, applied to the payment of the bonded indebtedness of said county.

SOURCES: Codes, 1942, § 7901-01; Laws, 1946, ch. 312, §§ 1, 2, eff December 31, 1946.

Cross References — Authority of board of supervisors to buy or lease land for county farm, see § 47-1-5.

§ 47-1-37. Board of supervisors may hire additional labor to work on county farm.

In the cultivation of crops and the gathering thereof if it shall appear necessary, from the lack of convict labor, the board of supervisors may employ free labor at current prices to work on a county convict farm until such time as the convict labor may become sufficient to complete and gather the crops started on such a farm, and pay for the same out of the county treasury.

SOURCES: Codes, 1906, § 878; Hemingway's 1917, § 4036; 1930, § 4061; 1942, § 7902; Laws, 1902, ch. 64; Laws, 1908, ch. 109.

§ 47-1-39. Municipal prison and prisoners; municipality to pay expenses of jail officer education courses.

(1) The governing authorities of municipalities shall have the power to construct and maintain a municipal prison, and to regulate the keeping of the

same and the prisoners therein, and to contract with the board of supervisors, which is empowered in the premises, for the use of the county jail by the municipality; and to provide for the working of the streets by municipal prisoners, and to contract with the county for such work by county prisoners or the working of county roads by municipal prisoners, or for working same on the county farms. Municipal prisoners shall be worked on county roads or county farms only in the county in which the municipality is situated. Males and females shall be confined in separate cells or compartments.

(2) The municipality shall pay the tuition, living and travel expenses incurred by a person attending and participating in the basic and continuing education courses for jail officers.

SOURCES: Codes, 1892, § 2954; 1906, § 3345; Hemingway's 1917, § 5842; 1930, § 2421; 1942, § 3374-135; Laws, 1950, ch. 491, § 135; Laws, 1964, ch. 543; Laws, 1968, ch. 552, § 1; Laws, 1973, ch. 319, § 2; Laws, 2000, ch. 515, § 12, eff from and after July 1, 2000.

Cross References — Separation of sexes, see § 47-1-23.

Jail owned jointly by county and municipality, see §§ 47-1-49 et seq.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

JUDICIAL DECISIONS

1. In general.

Where defendant pleaded guilty for unlawful possession of intoxicating liquors in violation of municipal ordinance and received suspended sentence, the order revoking the suspended sentence of thirty days in county jail and providing that defendant should be committed to sheriff to serve sentence in county jail was not proper. Gage v. State, 219 Miss. 338, 68 So. 2d 417 (1953).

Municipality held not liable for injury to prisoner, because of being forced to work on streets while shackled and chained. Warren v. Town of Booneville, 151 Miss. 457, 118 So. 290 (1928).

Under this section, Code 1942 § 3374-135, a city is not obliged to maintain its own jail, but may dispose of its prisoners in other ways. Marshall v. City of Meridian, 103 Miss. 206, 60 So. 135 (1912).

ATTORNEY GENERAL OPINIONS

City that arrests persons through its municipal police department must either house them in its own city jail or enter into contract with county board of supervisors to house city prisoners in county jail; sheriff may be required to accept persons sentenced to jail by city court only if city has contract with board of supervisors for such. Brown, July 29, 1992, A.G. Op. #92-0561.

City is responsible for paying medical expenses of city prisoners housed in city jail, as long as they remain city prisoners; in felony cases, prisoner remains city prisoner until he waives preliminary hearing or is bound over to grand jury. Brewer, Oct. 7, 1992, A.G. Op. #92-0532.

Sheriff may work municipal prisoners on county work crew only if municipality has contract with county which provides that sheriff may work municipal prisoners on county work crew. McGrew, Jan. 12, 1994, A.G. Op. #93-0966.

County may refuse to accept municipal prisoners in absence of agreement between county and municipality. Crawford, March 31, 1994, A.G. Op. #94-0187.

A municipality may provide meals for county prisoners working on city streets pursuant to a contract between the city and the county executed pursuant to Section 47-1-39. Gale, March 1, 1995, A.G. Op. #95-0053.

A municipality may furnish labor and all equipment necessary to install water/sewer lines and electrical services for a jail under an interlocal agreement as long as the municipality receives adequate consideration under the terms of the agreement. See Sections 17-5-1 and 21-17-1. Doty, December 13, 1995, A.G. Op. #95-0834.

The board of supervisors of a county is granted sole authority to contract with a municipality for the housing of municipal prisoners and the sheriff is bound thereby; the sheriff may be required to accept persons sentenced to jail by the city court only if the city has a contract with the board of supervisors for such. Richardson, June 12, 1998, A.G. Op. #98-0291.

A city may contract with a county regional correctional facility through the county board of supervisors to house city inmates and provide guard service for inmate work crews for the working of streets and other municipal projects in the city by entering into an interlocal agreement under the provisions of the Interlocal Cooperation Act of 1974. Inmate work crews would have to consist of municipal inmates from the city or county inmates if the board of supervisors has authorized such work under Section 47-1-9. Any guard that is employed by the facility to oversee such work crews would have to be deputized by the county sheriff. Putman, Aug. 19, 2005, A.G. Op. 05-0410.

A county board of supervisors is, by Section 47-1-39, granted sole authority to contract with a municipality for the housing of municipal prisoners and the sheriff is bound thereby. The sheriff may then accept persons sentenced to jail by the city court only if the city has a contract with the board for such. However, the county jail would not be allowed to house prisoners of a city, located outside of the county, unless an interlocal agreement is formed between the county and city pursuant to Sections 17-13-1 et seq. Kemp, Mar. 17, 2006, A.G. Op. 06-0072.

A sheriff is only required to accept municipal prisoners in the county jail if the municipality has a contract with the board of supervisors to house that municipality's prisoners. In addition, a board of supervisors is not required to enter into a contract with a municipality for the housing of the municipality's prisoners. Tanner, Oct. 13, 2006, A.G. Op. 06-0504.

Where a preliminary hearing is provided to a defendant charged for a felony and held as a municipal prisoner, the defendant should be bound over to a grand jury and thereby become a county prisoner after the hearing, if the judge so determines. Wiggins, March 2, 2007, A.G. Op. #07-00075, 2007 Miss. AG LEXIS 78.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-41. Working of municipal prisoners.

(1) Any person convicted of violating any ordinance of any city, town or village in this state and sentenced to pay a fine and costs therefor, and failing to do so, may be worked on the streets or other public works of the municipality in the custody of the street commissioner, or other person designated by the mayor and board of aldermen, or councilmen of such municipality and at its expense, and shall receive credit on such fine and costs as provided in Section

99-19-20 for each day so worked, and such municipality shall accord the same treatment to its convicts that is required by this chapter to county convicts. The responsibility of carrying out the provisions of this section shall devolve on the mayor and board of aldermen or board of councilmen of each municipality with reference to its convicts. In the event it is, in the judgment of the ruling authorities of any village in the state or of any small town in the state, unprofitable to work the convicts as above provided, then such village or town may contract with the board of supervisors of the county at the best price and take and work such convicts on the county farm, but the convict shall receive credit at the rate provided in Section 99-19-20 for each day worked.

(2) If a convict is unable to work or if the city, town or village is unable to provide work for the convict, the convict shall receive the credit provided in Section 99-19-20 for each day of confinement.

SOURCES: Codes, 1880, § 3185; 1892, § 813; 1906, § 869; Hemingway's 1917, § 4029; 1930, § 4069; 1942, § 7910; Laws, 1918, ch. 154; Laws, 2010, ch. 492, § 2, eff from and after passage (approved Apr. 7, 2010.)

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-43. Keeping of county offenders in municipal jails pending trial.

The board of supervisors of any county and the governing authorities of any municipality located within such county are hereby authorized to enter into agreements providing for the keeping of persons arrested for offenses committed within the county in which such municipality is located in the jail facilities of such municipality pending trial of such person. Such agreements may provide for the payment to the municipality by the board of supervisors from any available funds of the county of a sum not to exceed Five Dollars ($5.00) for each day or part thereof during which an offender may be confined in the jail of the municipality.

SOURCES: Codes, 1942, § 3374-135.5; Laws, 1968, ch. 288, § 1, eff from and after passage (approved March 27, 1968).

Cross References — Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

§ 47-1-45. Board of supervisors may agree with municipalities of the county on terms of working municipal convicts.

The board of supervisors of each county is authorized to make contract with any village or small town within the county to work its convicts on the county farm. But in agreeing to take and work such convicts the board of supervisors shall not agree to pay more per day for the labor of any municipal convict than in its judgment the labor of such convict is worth to the county, in order that in the working of such municipal convicts the county shall not do so at a loss to the county.

SOURCES: Codes, 1880, § 3185; 1892, § 813; 1906, § 869; Hemingway's 1917, § 4029; 1930, § 4070; 1942, § 7911; Laws, 1918, ch. 154.

RESEARCH REFERENCES

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-47. Credit allowed for labor of convicts; treatment.

(1) Every county or municipal convict shall be comfortably clothed at the expense of the county or municipality, but all clothing furnished shall remain the property of the county or municipality, and shall be thoroughly fumigated and disinfected before being allotted to a convict after having been used by another, and every convict shall be sufficiently fed, to maintain his body and induce his good health, with substantial and suitable food to be furnished and prepared and paid for by the county or municipality. Every convict, for each day's work he is required to do, shall receive credit on his fine and costs assessed against him at the rate provided under Section 99-19-20, until such fine and costs are fully paid. In case the convict is serving a sentence of imprisonment, each day that he works in serving such sentence shall entitle him credit for equal time on his sentence of imprisonment, but in no instance shall a convict receive credit on the fine and costs and on the time sentenced to imprisonment for the same work. No convict shall be allowed to labor more than eight (8) hours per day, but shall be required, when able, to perform eight (8) hours labor each day.

(2) If a convict is unable to work or if the county or the municipality is unable to provide work for the convict, the convict shall receive the credit provided in Section 99-19-20 for each day of imprisonment.

SOURCES: Codes, 1892, § 786; 1906, § 845; Hemingway's 1917, § 4020; 1930, § 4065; 1942, § 7906; Laws, 1908, ch. 109; Laws, 1954, ch. 243; Laws, 1979, ch. 501, § 2; Laws, 2010, ch. 492, § 3, eff from and after passage (approved Apr. 7, 2010.)

Cross References — Enforcement of sentence, see § 47-1-1.
Convicts physically unable not required to work, see § 47-1-11.

Medical aid for prisoners, see § 47-1-57.

Removal of prisoners in case of infectious disease, see §§ 47-3-7, 47-3-9.

Clothing for persons working on state highway projects, see § 65-1-8.

Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

JUDICIAL DECISIONS

1. In general.

The inmate showed no property interest or legal right for payment for the work that he performed while incarcerated for civil contempt so as to establish a deprivation of a property without due process of law under the Fourteenth Amendment because Miss. Code Ann. § 47-1-13 required payment for work performed by pretrial detainees, and the inmate was not a pretrial detainee; further, Miss. Code Ann. § 47-1-47 required credit for assessed fines and penalties based on work performed by those convicted of crimes, and the inmate was not working off an assessed fine or penalty. Carite v. Hinds County, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 50112 (S.D. Miss. July 21, 2006).

Incarceration of indigent for involuntary failure to pay fine and court costs which extend the total term of imprisonment beyond the maximum period prescribed by state law for the offense creates invidious discrimination based on ability to pay and is violative of the equal protection clause of the Fourteenth Amendment. Wade v. Carsley, 433 F.2d 68 (5th Cir. 1970).

Although incarceration beyond the maximum imprisonment prescribed by the state law for a particular offense for involuntary failure to pay a fine and court costs is violative of the Federal Constitution, the state can institute methods, other than incarceration, to enforce the collection of the remaining portion of the fine. Wade v. Carsley, 433 F.2d 68 (5th Cir. 1970).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 47-1-47 provides that, for each day's work convict is required to do, convict shall receive credit of $10 per day, until convict's fine and costs are fully paid. Simmons, Jan 11, 1993, A.G. Op. #92-0988.

Where inmate is physically willing and able to work, inmate is entitled to credit against fine and cost in amount of $10 per day, until such fine and cost are fully paid. Stewart, May 20, 1993, A.G. Op. #93-0255.

Prisoners' privileges of mail, telephone, visitation, access to law library and recreation are not addressed by state statute. Mullins, March 27, 1998, A.G. Op. #98-0159.

Where a defendant owes a $250.00 fine but refuses to pay it, he can be sent to jail under § 99-19-20(2); however, that statute limits the jail time to 10 days (one day for each $25.00 of the fine). If the defendant chooses to work during those 10 days, his fine will be reduced by $10.00 a day under this section. At the end of the 10 days, the defendant must be released. However, he will still owe $150.00 in fines. Thornton, May 29, 1998, A.G. Op. #98-0306.

A defendant who is jailed for not paying criminal fines is entitled to receive a credit against such fine of ten dollars per day under this section for each day that he works or is willing and able to work; this credit would be applied to both fines and assessments. Note that under Section 99-19-20 jail time may not exceed one day for each twenty-five dollars of the fines owed by the defendant. Strahan, July 7, 2003, A.G. Op. 03-0321.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 218-221.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 763, December 1979.

§ 47-1-49. Control over jails owned jointly by municipalities and counties.

In the case of a jail owned jointly by a county and municipality, under the provisions of Section 17-5-1, the governing authorities of the county and municipality are hereby vested with full and complete authority, jurisdiction and control over such jointly owned jail facility and the governing authority of the municipality may appoint a jailer who shall be responsible for all municipal prisoners lodged in said jail in the same manner in which the sheriff is responsible for state prisoners, and such jailer shall have the same right of access to the jail as the sheriff.

SOURCES: Codes, 1857, ch. 6, art. 136; 1871, § 242; 1880, § 342; 1892, § 4132; 1906, § 4684; Hemingway's 1917, § 3101; 1930, § 3331; 1942, § 4256; Laws, 1966, ch. 369, § 1, eff from and after passage (approved May 6, 1966).

Cross References — Penalty for injuring or destroying any property of jail, see § 97-17-39.

JUDICIAL DECISIONS

1. In general.

Since the functions of the sheriff are confined to his own county, except in the case of the pursuit of an escaping offender, there can be no recovery on a sheriff's bond for the alleged unlawful treatment of one accused of crime apprehended in another state where such treatment and the event complained of occurred in such other state. McLean v. Mississippi ex rel. Roy, 96 F.2d 741, 119 A.L.R. 670 (5th Cir. 1938), cert. denied, 305 U.S. 623, 59 S. Ct. 84, 83 L. Ed. 399 (1938).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 30, 31.

CJS. 80 C.J.S., Sheriffs and Constables §§ 51-53.

§ 47-1-51. Jointly owned jails; jail supplies.

The jailer of a jail jointly owned by a county and a municipality shall, in regard to municipal prisoners, provide daily wholesome and sufficient food and drink, fire and lights when necessary and proper, and sufficient and clean bedding for all such prisoners committed to the jail, either before or after conviction. Any prisoner may, if he thinks fit, supply himself with meat and drink and bedding, but the same shall pass through the hands of the jailer to the prisoner.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art. 3 (15); 1857, ch. 6, art. 131; 1871, § 237; 1880, § 343; 1892, § 4136; 1906, § 4687; Hemingway's 1917, § 3104; 1930, § 3334; 1942, § 4259; Laws, 1896, p. 153; Laws, 1966, ch. 369, § 2; Laws, 1968, ch. 552, § 2, eff from and after passage (approved April 29, 1968).

Cross References — Personal inspection of jail by grand jury, see § 13-5-55.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 181-185.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

§ 47-1-53. [Reserved].

§ 47-1-55. Jointly owned jails; guards.

In the case of a jail jointly owned by a county and a municipality, the circuit judge in the district in which such jail is located, upon the request and recommendation of either the sheriff of the county or the marshal or chief of police of the municipality involved in the joint ownership, may authorize additional jail guards in cases of emergency and the cost thereof shall be paid in equal proportions by the county and municipality involved.

SOURCES: Codes, Hutchinsons's 1848, ch. 28, art. 6(31); 1857, ch. 6, art. 135; 1871, § 241; 1880, § 344; 1892, § 4138; 1906, § 4689; Hemingway's 1917, § 3106; 1930, § 3336; 1942, § 4261; Laws, 1966, ch. 369, § 4, eff from and after passage (approved May 6, 1966).

Cross References — Additional guards for county jails, see § 19-25-75.
Removal of prisoners to jail of another county, see §§ 47-3-1 et seq.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 216.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 4, 5.

§ 47-1-57. Furnishing of medical aid to prisoners; nurse screening for county prisoner for nonemergency medical complaints.

(1) When any person confined in jail shall be in need of medical or surgical aid, the sheriff shall immediately examine the condition of such prisoner and, if he is of the opinion that the prisoner needs such aid, he shall call in a nurse or physician to attend him. If the prisoner be unable to pay the cost, the account of the nurse or physician, when allowed and certified as required in respect to accounts of sheriffs for keeping prisoners, shall be paid, in like manner, out of the treasury of the county in which a prisoner is charged with

the crime for which he is imprisoned. The board of supervisors may contract with a physician for the jail by the year.

(2) The board of supervisors of any county may authorize the sheriff to establish a program under which prisoners expressing the need for non-emergency medical attention will have access to a registered nurse who will evaluate their condition and determine the necessity for treatment by a physician. Charges for such a visit with a registered nurse shall be paid by the prisoner by deductions made by the sheriff out of any funds of the prisoner held by the sheriff or in any other manner satisfactory to the sheriff; however, such prisoner shall not be required to pay out of funds of the prisoner held by the sheriff, more than Ten Dollars ($10.00) per visit. If the prisoner is unable to pay the cost, the cost shall be paid out of the county treasury in the same manner as provided for payment of other medical costs in subsection (1) of this section.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art. 8; 1857, ch. 6, art. 132; 1871, § 238; 1880, § 345; 1892, § 4139; 1906, § 4690; Hemingway's 1917, § 3107; 1930, § 3337; 1942, § 4262; Laws, 1940, ch. 262; Laws, 1956, ch. 194; Laws, 1994, ch. 642, § 1, eff from and after passage (approved April 8, 1994).

Cross References — Personal inspection of health of prisoners by grand jury, see § 13-5-55.

General treatment of prisoners, see § 47-1-47.

Removal of prisoners in case of infectious disease, see §§ 47-3-7, 47-3-9.

JUDICIAL DECISIONS

1. In general.

A complaint that a physician has been negligent in diagnosing or treating a prisoner's medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment. McFadden v. State, 542 So. 2d 871 (Miss. 1989).

Where neither the sheriff nor the jailer ever examined the prisoner to form an opinion as to whether he did or did not need medical aid, the sheriff was not relieved from liability for death of prisoner who was suffering from ulcers, on the ground that the sheriff was acting in judicial capacity. Farmer v. State, 224 Miss. 96, 79 So. 2d 528 (1955).

This section [Code 1942, § 4262], has no application to a case where a prisoner, shot by a deputy sheriff while attempting to escape, is carried to his mother's house and is there treated by a physician procured by the sheriff at the suggestion of the circuit judge. Gray v. Coahoma County, 72 Miss. 303, 16 So. 903 (1894).

ATTORNEY GENERAL OPINIONS

Nothing prohibits the county from submitting a claim to an insurance carrier for the costs incurred by an inmate who has insurance. Fortier, Aug. 30, 2002, A.G. Op. #02-0490.

Sheriffs are required to provide reasonable and necessary dental aid to prisoners suffering from illnesses or injuries which dental assistance would alleviate; however, sheriffs are not required to provide routine dental work for prisoners. McLean, May 3, 1991, A.G. Op. #91-0298.

Sheriffs are required to provide reasonable medical care for serious pre-existing illnesses and injuries of prisoners and detainees. McLean, May 3, 1991, A.G. Op. #91-0298.

Pursuant to Section 47-1-57 the board of supervisors may contract with a physician for the jail and the sheriff must use that physician. The funds used to pay for such a physician should come from the county general fund. However, the cost of the contract should not be borne by the sheriff's budget unless funds are included in the budget for the contract as for medical expenses covered by the contract. Pope, October 11, 1996, A.G. Op. #96-0654.

Municipalities are liable for health care and hospitalization costs of indigent prisoners with preexisting medical conditions. Davies, March 20, 1998, A.G. Op. #98-0095.

The responsibility for medical expenses incurred by a municipal prisoner lies with the prisoner; if the prisoner is determined indigent and unable to pay his medical expenses, then the municipality has the responsibility for those medical costs. Absent an agreement to the contrary, the responsibility for the medical costs of a municipal prisoner housed in the county jail remains with the municipality. Davis, December 18, 1998, A.G. Op. #98-0741.

If a prisoner is unable to pay medical costs, the municipality should pay such costs. If the municipality determines that the prisoner is able to pay for the medical treatment, it may seek reimbursement by civil suit. Miller, Aug. 20, 2004, A.G. Op. 04-0387.

A governmental entity is not responsible for the medical care of an individual who is no longer in the custody of that entity. As a former inmate is no longer in custody, a governmental entity is not responsible for their medical care. Parker, Sept. 17, 2004, A.G. Op. 04-0444.

RESEARCH REFERENCES

ALR. Right of state prison authorities to administer neuroleptic or antipsychotic drugs to prisoner without his or her consent — state cases. 75 A.L.R.4th 1124.

Malpractice in diagnosis or treatment of meningitis. 51 A.L.R.5th 301.

Relief under Federal Civil Rights Acts to state prisoners complaining of denial of medical care. 28 A.L.R. Fed. 279.

Constitutional right of prisoners to abortion services and facilities — federal cases. 90 A.L.R. Fed. 683.

Federal constitutional and statutory claims by HIV-positive inmates as to medical treatment or conditions of confinement. 162 A.L.R. Fed. 181.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 99.

22 Am. Jur. Trials 1, Prisoners' Rights Litigation.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 78 et seq.

§ 47-1-59. Hospitalization of prisoners; expenses.

(1) When the sheriff, marshal or any other peace officer of this state has in his lawful custody a prisoner who, through accident, injury or illness, is in need of hospitalization, such officer may take such prisoner to the nearest hospital in the county or if there be no hospital in that county, to the nearest hospital in an adjacent county and if upon arrival at such hospital any physician licensed to practice medicine in this state certifies that in his opinion such prisoner is in need of hospitalization, such prisoner shall be hospitalized in such hospital for as long as in the opinion of such physician it is necessary to so hospitalize such prisoner. If, in the opinion of the sheriff or other peace officer having custody of such prisoner at the time he is delivered to the

aforesaid hospital, or in the opinion of the director of the university hospital if the prisoner be brought to that institution, it is necessary that he be placed under guard while a patient at such hospital, the sheriff of the county in which the crime he was placed in custody for committing was alleged to have taken place, shall furnish the aforesaid guard. When the aforesaid physician or other reputable physician shall certify that hospitalization no longer is needed, the prisoner shall be returned to the original place of detention.

(2) The actual expense of guarding the prisoner in the hospital shall be paid out of the general funds of the county where the prisoner was originally confined or arrested. The expense contracted incident to the hospitalization aforesaid shall be paid by the prisoner; otherwise he may be hospitalized as a state aid patient. However, if the prisoner is ineligible for state aid or the amount available for hospitalization as a state aid patient is inadequate to pay all such hospital expense of a prisoner who is financially unable to pay his own expenses, the board of supervisors of the county where the prisoner was originally confined or arrested shall, upon presentation of the certificate of the physician certifying that said prisoner was in need of hospitalization, pay from the general funds of the county the reasonable and customary charges for such services or as much thereof as is not paid by state aid. Any such payment to a hospital shall be discretionary with the board of supervisors if its county supports the hospital involved by a special tax levy for its operation and maintenance.

SOURCES: Codes, 1942, § 4262.5; Laws, 1954, ch. 245, §§ 1, 2; Laws, 1956, ch. 310; Laws, 1964, ch. 369, § 1; Laws, 1966, ch. 370, § 1; Laws, 1971, ch. 401, § 1, eff from and after passage (approved March 23, 1971).

JUDICIAL DECISIONS

1. In general.

County was not entitled to a dismissal of a health care provider's reimbursement claim for a prisoner's medical expenses under Miss. Code Ann. § 47-1-59 because such claims were separate and distinct from the state's law related to sovereign immunity and the claims were not implied contractual claims subject to immunity under Miss. Code Ann. § 11-46-3. Vuncannon v. United States, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 52190 (N.D. Miss. June 22, 2009).

In an action to recover on a promissory note, where the plaintiff attempted to convert its cause of action, by way of motion for summary judgment, from a suit on a promissory note to one for relief under § 47-1-59, such a change could not be accomplished in this manner and the proper procedure was for the plaintiff to amend its bill of complaint to allege that a cause of action existed under § 47-1-59. Pearl River County Bd. of Supvrs. v. South E. Collections Agency, Inc., 459 So. 2d 785 (Miss. 1984).

ATTORNEY GENERAL OPINIONS

Based on Section 47-1-59, a suspect who is in the custody of a law enforcement agency and needs medical attention has the responsibility for paying for his own medical bills. If the suspect is indigent and cannot pay his own medical bills, then he should be treated as a state aid patient. If the suspect does not qualify for state aid or state aid does not cover the full medical expenses, then the county board of supervisors is responsible for such medical expenses. Jones, November 22, 1996, A.G. Op. #96-0785.

Municipalities are liable for health care and hospitalization costs of indigent prisoners with preexisting medical conditions. Davies, March 20, 1998, A.G. Op. #98-0095.

The responsibility for medical expenses incurred by a municipal prisoner lies with the prisoner; if the prisoner is determined indigent and unable to pay his medical expenses, then the municipality has the responsibility for those medical costs. Absent an agreement to the contrary, the responsibility for the medical costs of a municipal prisoner housed in the county jail remains with the municipality. Davis, December 18, 1998, A.G. Op. #98-0741.

A governmental entity is not responsible for the medical care of an individual who is no longer in the custody of that entity. As a former inmate is no longer in custody, a governmental entity is not responsible for their medical care. Parker, Sept. 17, 2004, A.G. Op. 04-0444.

RESEARCH REFERENCES

ALR. Right of state prison authorities to administer neuroleptic or antipsychotic drugs to prisoner without his or her consent — state cases. 75 A.L.R.4th 1124.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 99, 217.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 78 et seq., 136, 140.

§ 47-1-61. Penalty for failure to discharge convict.

Any sheriff or other person having lawful custody of any convict who shall fail to discharge such convict when he shall have served the full time of his sentence and fully paid his fine and the costs charged against him, shall be guilty of a misdemeanor and punished accordingly.

SOURCES: Codes, 1892, § 807; 1906, § 863; Hemingway's 1917, § 4028; 1930, § 4078; 1942, § 7919; Laws, 1908, ch. 109.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 19-21.

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 153.

§ 47-1-63. Residency of prisoner as affected by incarceration in facility of Department of Corrections.

No person shall be deemed to be a resident of a county solely because of being incarcerated in a facility under the jurisdiction of the Department of Corrections that is located in such county.

SOURCES: Laws, 1991, ch. 440, § 3, eff from and after May 1, 1992 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's Note — The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 1991, ch. 440, § 3, on May 1, 1992.

ATTORNEY GENERAL OPINIONS

An inmate housed in a jail or other local detention facility may not use that facility or jail as his residence for voter registration purposes; an inmate who has not been convicted of a crime that disqualifies him from voting, may register by mail in the county in which he resided immediately prior to his incarceration. Scott, Oct. 27, 2000, A.G. Op. #2000-0644.

Inmates under the jurisdiction of the Mississippi Department of Corrections should not be used in determining the population of county supervisor districts for redistricting purposes by virtue of their temporary presence in a detention facility or jail in the county, unless their actual place of residence is also in the county. Johnson, Feb. 22, 2002, A.G. Op. #02-0060.

CHAPTER 3

Removal of Prisoners

Sec.
47-3-1. Removal to jail of another county.
47-3-3. No removal after commitment.
47-3-5. Removal to place where convicts may be worked.
47-3-7. Removal in case of infectious or contagious disease.
47-3-9. Removal in case of infectious or contagious disease; place where prisoners may be taken.
47-3-11. Transfer of convicted foreign national to country of citizenship.

§ 47-3-1. Removal to jail of another county.

When the accused is not entitled to bail, or where he fails to give bail, and there is no county jail or the jail of the county in which the offense is committed, or where the case stands for trial is, in the opinion of the committing officer or of the court having jurisdiction of the case or of the presiding judge, insufficient for the accommodation of the prisoners, or where the judge having jurisdiction of the case shall think it expedient, on grounds of public policy, so to do, it shall be the duty of the officer of the court, or circuit judge, to make an order for the removal of the accused to a convenient and safe jail of some convenient county, there to be kept until the court shall sit for the trial of the accused. It shall be the duty of the sheriff of the county to which the prisoner is so removed, to receive and safely keep him, according to the order of the court or officer having jurisdiction thereof; and it shall further be the duty of said sheriff to have the body of the accused, without further order, before the proper court of the proper county, at its next term thereafter, on the first day of the term, unless he shall have been discharged by due course of law. The county in which the offense is committed, or where the case stands for trial, shall pay all the expenses of such removal and safekeeping and return of the accused for trial.

SOURCES: Codes, Hutchinson's 1848, ch. 65, art. 2(76); 1857, ch. 64, art. 290; 1871, § 2790; 1880, § 3052; 1892, § 1403; 1906, § 1476; Hemingway's 1917, § 1234; 1930, § 1256; 1942, § 2499; Laws, 1964, ch. 355; Laws, 1973, ch. 319, § 1, eff from and after passage (approved March 14, 1973).

JUDICIAL DECISIONS

1. In general.

An inmate housed in a city jail pursuant to a detainer filed by a county, which city and county were under federal court order to relieve overcrowding and had entered into an interlocal agreement pursuant to which the city housed a certain number of county inmates, was in the custody of the county. Jones v. City of Jackson, 203 F.3d 875 (5th Cir. 2000).

The circuit court of one county erred in holding that it had no authority to give a defendant credit for time served in another county while awaiting trial in a second county, where the first county retained the defendant on a detainer when it allowed him to be transferred to the second county, which, under § 47-3-1, did not release him from the jurisdiction of the first county. Lee v. State, 437 So. 2d

1208 (Miss. 1983).

In prosecution for murder where the accused was confined in a jail in Louisville, instead of Vaiden where the accused was tried, it was no error, where Vaiden had no jail. Goldsby v. State, 226 Miss. 1, 86 So. 2d 27 (1955), cert. denied, 350 U.S. 925, 76 S. Ct. 216, 100 L. Ed. 809 (1955).

This section [Code 1942, § 2499] does not authorize the removal of a prisoner to another county for any purpose not named in the statute. Ex parte Buck, 104 Miss. 661, 61 So. 651 (1913).

The statute [Code 1942, § 2499] does not warrant the removal of a person sentenced to imprisonment in the jail of the county where his offense was committed, to the jail of another county, to prevent him from directing, from the jail, the illegal sale of intoxicating liquor. Ex parte Buck, 104 Miss. 661, 61 So. 651 (1913).

Order for removal of prisoner from one jail to another for safekeeping does not exhaust court's power to make another order of removal that he should be taken to another jail for safekeeping. Wray v. Kelly, 98 Miss. 172, 53 So. 492 (1910).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 163-166.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 18, 128, 129.

§ 47-3-3. No removal after commitment.

A person committed or in custody on a criminal charge shall not be removed from the place of his confinement into the custody of any other officer, unless it be by habeas corpus or some other legal writ, except for trial, or in case of fire or infection, or other necessity, or in accordance with express provision of law. If any person, after such commitment, shall make out or issue any warrant or process for such removal except as authorized, it shall be void.

SOURCES: Codes, Hutchinson's 1848, ch. 65, art. 1(17); 1857, ch. 48, art. 9; 1871, § 1408; 1880, § 3053; 1892, § 1404; 1906, § 1477; Hemingway's 1917, § 1235; 1930, § 1257; 1942, § 2500.

Cross References — Removal of prisoners in case of infectious or contagious disease, see §§ 47-3-7, 47-3-9.

JUDICIAL DECISIONS

1. In general.

Code 1942, § 2499, does not authorize the removal of a prisoner to another county for any purpose not named in the statute. Ex parte Buck, 104 Miss. 661, 61 So. 651 (1913).

The statute [Code 1942, § 2499] does not warrant the removal of a person sentenced to imprisonment in the jail of the county where his offense was committed, to the jail of another county, to prevent him from directing, from the jail, the illegal sale of intoxicating liquor. Ex parte Buck, 104 Miss. 661, 61 So. 651 (1913).

Order for removal of prisoner from one jail to another for safekeeping does not exhaust court's power to make another order of removal that he should be taken to another jail for safekeeping. Wray v. Kelly, 98 Miss. 172, 53 So. 492 (1910).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 163-166.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 18, 128, 129.

§ 47-3-5. Removal to place where convicts may be worked.

It shall be unlawful for any officer, convict manager, or other person to remove any convict to the state farm, county farm, road or other place where convicts may be worked before the expiration of five (5) days from the date of conviction, unless said convict may express himself so ready to go at an earlier date and such consent be entered on the minutes by order of the court. Any officer or other person violating this section shall be guilty of a misdemeanor and fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500.00), or be imprisoned in the county jail not less than thirty (30) days or more than six (6) months, or both such fine and imprisonment.

SOURCES: Codes, Hemingway's 1921 Supp, §§ 1142g, 1142h; 1930, § 1258; 1942, § 2501; Laws, 1918, ch. 245; Laws, 1920, ch. 328.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 163-166.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 18, 128, 129.

§ 47-3-7. Removal in case of infectious or contagious disease.

If any infectious or contagious disease shall appear in the vicinity of any jail, or if the appearance of such disease be apprehended, the board of supervisors of the county, or, if it should not meet in time, the sheriff of the county, with the concurrence of two (2) members of such board, or of a circuit judge or chancellor, expressed in writing, may cause the prisoners confined in such jail to be removed to some suitable place of security, for safekeeping, until the threatened danger shall be over, when they shall be returned to the jail.

SOURCES: Codes, 1880, § 3054; 1892, § 1405; 1906, § 1478; Hemingway's 1917, § 1236; 1930, § 1259; 1942, § 2502.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 99 et seq., 163-166, 203.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 83, 84, 128, 129.

§ 47-3-9. Removal in case of infectious or contagious disease; place where prisoners may be taken.

Removal of prisoners pursuant to Section 47-3-7 may be to some place in the county, or to the jail of another county. The jailer of such other county shall receive the prisoners and keep them safely, and surrender them when called for by the authority of the sheriff of the county from which they were removed. All the expenses of any such removal of prisoners and their imprisonment anywhere else, shall be borne by the county chargeable with the expense of imprisonment and trial of prisoners.

SOURCES: Codes, 1880, § 3055; 1892, § 1406; 1906, § 1479; Hemingway's 1917, § 1237; 1930, § 1260; 1942, § 2503.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 99 et seq., 163-166, 203.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 83, 84, 128, 129.

§ 47-3-11. Transfer of convicted foreign national to country of citizenship.

When a treaty is in effect between the United States of America and a foreign country providing for the transfer of convicted offenders to the country of which they are citizens or nationals, the Governor, on behalf of the State of Mississippi, is authorized, subject to the terms of the treaty, to consent to the transfer of the convicted offender. The Governor is authorized to develop any policies and procedures which may be necessary to carry out the mandates of this section.

SOURCES: Laws, 2001, ch. 442, § 1, eff from and after July 1, 2001.

CHAPTER 4

Privately Operated Correctional Facilities

Sec.
47-4-1. Privately operated correctional facilities authorized for federal and other states' inmates.
47-4-3. Prerequisites to establishment of privately operated correctional facilities; petition and election.
47-4-5. Agreements with private sources to operate juvenile detention centers.
47-4-7. Authority, power and jurisdiction of private guards and jailers; escapees; penalties; pursuit and capture.
47-4-9. County may contract with private entity for operation of county jail.
47-4-11. Amendment, extension and/or renewal of certain agreements in connection with private correctional facilities.

§ 47-4-1. Privately operated correctional facilities authorized for federal and other states' inmates.

(1) It is lawful for there to be located within Wilkinson County and Leflore County a correctional facility operated entirely by a private entity pursuant to a contractual agreement between such private entity and the federal government, any state, or a political subdivision of any state to provide correctional services to any such public entity for the confinement of inmates subject to the jurisdiction of such public entity. Any person confined in such a facility pursuant to the laws of the jurisdiction from which he is sent shall be considered lawfully confined within this state. The private entity shall assume complete responsibility for the inmates and shall be liable to the State of Mississippi for any illegal or tortious actions of such inmates.

(2) The Department of Corrections shall contract with the Board of Supervisors of Leflore County for the private incarceration of not more than one thousand (1,000) state inmates at a facility in Leflore County. Any contract must comply with the requirements of Section 47-5-1211 through Section 47-5-1227.

(3) It is lawful for any county to contract with a private entity for the purpose of providing correctional services for the confinement of federal inmates subject to the jurisdiction of the United States. Any person confined in such a facility pursuant to the laws of the United States shall be considered lawfully confined within this state. The private entity shall assume complete responsibility for the inmates and shall be liable to the county or the State of Mississippi, as the case may be, for any illegal or tortious actions of the inmates.

(4) It is lawful for there to be located within any county a correctional facility operated entirely by a private entity and the federal government to provide correctional services to the United States for the confinement of federal inmates subject to the jurisdiction of the United States. Any person confined in a facility pursuant to the laws of the United States shall be considered lawfully confined within this state. The private entity shall assume complete respon-

sibility for the inmates and shall be liable to the State of Mississippi for any illegal or tortious actions of the inmates.

A person convicted of simple assault on an employee of a private correctional facility while such employee is acting within the scope of his or her duty or employment shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than five (5) years, or both.

A person convicted of aggravated assault on an employee of a private correctional facility while such employee is acting within the scope of his or her duty or employment shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than thirty (30) years, or both.

(5) The Department of Corrections may contract with the Tallahatchie County Correctional Facility authorized in Chapter 904, Local and Private Laws of 1999, for the private incarceration of not more than one thousand (1,000) state inmates at a facility in Tallahatchie County. Any contract must comply with the requirements of Section 47-5-1211 through Section 47-5-1227. No state inmate shall be assigned to the Tallahatchie County Correctional Facility unless the inmate cost per day is at least ten percent (10%) less than the inmate cost per day for housing a state inmate at a state correctional facility.

(6) If a private entity houses state inmates, the private entity shall not displace state inmate beds with federal inmate beds unless the private entity has obtained prior written approval from the Commissioner of Corrections.

(7) It is lawful for there to be located within Leflore County a correctional facility operated entirely by a private entity pursuant to a contractual agreement between such private entity and the federal government, the State of Mississippi, or Leflore County for the incarceration of federal inmates. Such correctional facility may include a separate Leflore County jail which may be located on or adjacent to the correctional facility site. To further the provisions of this subsection:

(a) Any private entity, the State of Mississippi, or Leflore County may enter into any agreement regarding real property or property, including, but not limited to, a lease, a ground lease and leaseback arrangement, a sublease or any other lease agreement or arrangement, as lessor or lessee. Such agreements shall not exceed forty (40) years. The Department of Corrections may enter such agreements or arrangements on behalf of the State of Mississippi;

(b) The powers conferred under this subsection shall be additional and supplemental to the powers conferred by any other law. Where the provisions of this subsection conflict with other law, this subsection shall control; and

(c) The private entity shall assume complete responsibility for the inmates and shall be liable to the State of Mississippi for any illegal or tortious actions of the inmates.

SOURCES: Laws, 1992, ch. 537, § 1; Laws, 1994 Ex Sess, ch. 26, § 5; Laws, 1997, ch. 486, § 1; Laws, 2004, ch. 540, § 1; Laws, 2013, ch. 480, § 1, eff from and after passage (approved Apr. 1, 2013.)

Editor's Note — The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 1992, ch. 537, § 1, on August 12, 1992.

JUDICIAL DECISIONS

1. Validity of indictment.

Defendant's conviction for simple assault of an employee of a private correctional facility was appropriate because the nature and cause of the charge against defendant were clear and the indictment properly informed him of the possible defenses to the charged offense. The trial court was within its discretion in finding that the jury properly weighed the evidence and determined that the State showed that the victim suffered an injury as a result of defendant's striking her with his fist. Moten v. State, 20 So. 3d 757 (Miss. Ct. App. 2009).

ATTORNEY GENERAL OPINIONS

Although counties may contract with private entities to house federal inmates, such entities are not authorized by this section to house inmates from other states that are not federal inmates. Puckett, July 3, 1997, A.G. Op. #97-0388.

The board of alderman of the Town of Woodville may contract with Corrections Corporation of America to incarcerate Town of Woodville prisoners at the private facility in Wilkinson County. Wilkerson, January 16, 1998, #97-0790.

Subsection (1) of this section is sufficient authority for a contract between Leflore County and Correctional Corporation of America, and for a contract between the City of Greenwood and Correctional Corporation of America, for the private incarceration of their inmates. Perkins, April 9, 1999, A.G. Op. #99-0154.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-4-3. Prerequisites to establishment of privately operated correctional facilities; petition and election.

(1) Before a private correctional facility may be located in the county, the board of supervisors shall by resolution duly adopted and entered on its minutes specify the location of the facility, the nature and size of the facility, the type of inmates to be incarcerated and the identity of the private entity which will operate the facility. The board shall publish a notice as hereinafter set forth in a newspaper having general circulation in such county. Such notice shall include location of the facility, the nature and size of the facility, the type of inmates to be incarcerated and the identity of the entity which will operate the facility. Such notice shall include a brief summary of the provisions of this section pertaining to the petition for an election on the question of the location of the private correctional facility in such county. Such notice shall be

published not less than one (1) time each week for at least three (3) consecutive weeks in at least one (1) newspaper having general circulation in the county.

(2) If a petition signed by twenty percent (20%), or fifteen hundred (1500), whichever is less, of the qualified electors of the county is filed within sixty (60) days of the date of the last publication of the notice with the board of supervisors requesting that an election be called on the question of locating such facility, then the board of supervisors shall adopt a resolution calling an election to be held within such county upon the question of the location of such facility. Such election shall be held, as far as practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of the county may vote, and the ballots used at such election shall have printed thereon a brief statement of the facility to be constructed and the words "For the construction of the private correctional facility in (here insert county name) County" and "Against the construction of the private correctional facility in (here insert county name) County." The voter shall vote by placing a cross (x) or check mark (√) opposite his choice on the proposition. When the results of the election on the question of the construction of the facility shall have been canvassed by the election commissioners of the county and certified by them to the board of supervisors, it shall be the duty of the board of supervisors to determine and adjudicate whether or not a majority of the qualified electors who voted thereon in such election voted in favor of the construction of the facility in such county. If a majority of the qualified electors who voted in such election vote against the construction of the facility, then the facility shall not be constructed in the county.

(3) If no petition as prescribed in subsection (2) of this section is filed with the board of supervisors within sixty (60) days of the date of the last publication of the notice, the board of supervisors shall by a resolution duly adopted and entered on its minutes, state that no petition was timely filed and the board may give final approval to the location of the facility.

SOURCES: Laws, 1992, ch. 537, § 2, eff from and after passage (approved May 14, 1992).

Editor's Note — The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 1992, ch. 537, § 2, on August 12, 1992.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-4-5. Agreements with private sources to operate juvenile detention centers.

Any local unit of government, or any local unit of government in cooperation with other local units of government, may enter into agreements with private sources for the operation and supervision of juvenile detention centers.

SOURCES: Laws, 1992, ch. 537, § 3, eff from and after passage (approved May 14, 1992).

Editor's Note — The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 1992, ch. 537, § 3, on August 12, 1992.

ATTORNEY GENERAL OPINIONS

Private jail facilities are generally not authorized, but any governmental unit or units together may contract with private sources for operation and supervision of juvenile detention centers. Barrett, Oct. 21, 1992, A.G. Op. #92-0718.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-4-7. Authority, power and jurisdiction of private guards and jailers; escapees; penalties; pursuit and capture.

(1) All private guards and jailers at private or public facilities shall have the same authority, power and jurisdiction as contractor's employees under the Special Needs Prison Program of 1994, if they meet the minimum training requirements for state employees performing similar duties at public correctional and detention facilities.

(2) Any inmate or person confined in a facility as provided for under subsection (1) of this section who escapes or attempts to escape from any such facility, and any person who aids or assists in such escape or attempted escape, shall be subject to the penalties as prescribed in Sections 97-9-25 through 97-9-49. Any guard or jailer at any such facility shall be authorized to pursue and assist in the capture of any such escapee.

SOURCES: Laws, 1998, ch. 581, § 3, eff from and after passage (approved April 17, 1998).

Cross References — Possession of prohibited items by employees or officers of Department of Corrections or others allowed on premises, see § 47-5-192.

General prohibitions regarding employees or officers of Department of Corrections, sheriff's department, private correctional facility or other persons or offenders, see § 47-5-193.

Special Needs Prison Program of 1994, see §§ 47-5-1101 et seq.

§ 47-4-9. County may contract with private entity for operation of county jail.

The board of supervisors of any county, with the approval of the sheriff, may contract with a private entity for the management, operation and maintenance of a county jail.

SOURCES: Laws, 2004, ch. 540, § 2, eff from and after passage (approved May 13, 2004.)

§ 47-4-11. Amendment, extension and/or renewal of certain agreements in connection with private correctional facilities.

In order for the Mississippi Department of Corrections to manage funds budgeted and allocated in its Contractual Services budget category, the commissioner of the department shall have the authority to amend, extend and/or renew the term of any lease agreement or any inmate housing agreement in connection with a private correctional facility. Notwithstanding any statutory limits to the contrary, such amendment, extension and/or renewal may be for a length of time up to and including ten (10) years as is necessary for the continued operations of such facilities and implementation of the department's duties and responsibilities in accordance with Title 47 of the Mississippi Code of 1972, as amended.

SOURCES: Laws, 2010, ch. 490, § 2, eff from and after passage (approved Apr. 7, 2010.)

CHAPTER 5

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§ 47-5-1. Policy of state in operation and management of correctional system; independent internal examinations.

It shall be the policy of this state, in the operation and management of the correctional system, to so manage and conduct the same in that manner as will be consistent with the operation of a modern correctional system and with the view of making the system self-sustaining. Those convicted of violating the law and sentenced to a term in the state correctional system shall have humane treatment, and be given opportunity, encouragement and training in the manner of reformation.

It shall be the policy of this state that the correctional system shall be operated and managed in the most efficient and economical manner possible. The Mississippi Department of Corrections shall so manage and operate the correctional system in that manner in order to make the system self-sustaining and to conserve state general fund revenues. The Mississippi Department of Corrections shall provide leadership to bring about the earliest possible construction of satisfactory prison inmate facilities, and shall utilize existing state resources, including inmates for prison construction labor, when and wherever practicable, in order to minimize the need for state general funds for prison construction.

It shall be the policy of this state that periodic independent internal investigations of the department shall be conducted to ensure the implementation of state correctional policies.

SOURCES: Codes, 1942, § 7921; Laws, 1964, ch. 378, § 1; Laws, 1976, ch. 440, § 2; reenacted, Laws, 1981, ch. 465, § 1; reenacted and amended, Laws, 1984, ch. 471, § 1; reenacted and amended, Laws, 1986, ch. 413, § 1; Laws, 1988, ch. 504, § 2; Laws, 1995, ch. 416, § 1, eff from and after passage (approved March 15, 1995).

Editor's Note — Laws of 1976, ch. 440, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Corrections Act of 1976.' "

Laws of 1981, ch. 465, § 118, which provided for the automatic repeal of provisions reenacting the Department of Corrections and the State Parole Board on June 30, 1984, was repealed by Laws of 1984, ch. 471, § 126. In turn, Laws of 1984, ch. 471, § 128, provided for the automatic repeal of these provisions from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986), repealed Laws of 1984, ch. 471, § 128, thereby removing the repeal date.

Laws of 1988, ch. 503, § 1, provides as follows:

"SECTION 1. The Mississippi Board of Corrections is hereby abolished and all power, authority, duties and functions of such board shall hereafter vest in and be performed by the Mississippi Department of Corrections. The terms 'Mississippi Board of Corrections', 'Board of Corrections' and 'board' appearing in the laws in connection with the performance of the board's functions transferred to the Mississippi Department of Corrections shall be the Department of Corrections, and more particularly such words or terms shall mean the Mississippi Department of Corrections whenever they appear."

Laws of 2013, ch. 524, § 1 provides:

"SECTION 1. (1) There is hereby created the Corrections and Criminal Justice Task Force to undertake a comprehensive review of the state's corrections system and criminal justice system. The task force shall be comprised of twenty-one (21) members, as follows:

"(a) The Chairpersons of the Corrections Committees of the Senate and the House of Representatives or their designees;

"(b) The Chairpersons of the Judiciary 'B' Committees of the Senate and the House of Representatives or their designees;

"(c) The Lieutenant Governor or a designee;

"(d) The Speaker of the House of Representatives or a designee;

"(e) The Commissioner of Corrections or a designee;

"(f) The Attorney General or a designee;

"(g) A state Supreme Court justice or Court of Appeals judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(h) A state circuit court judge who presides over a certified drug court, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(i) A state justice court judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(j) A state county court judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(k) A county public defender, appointed by the Governor;

"(*l*) The Director of the Capital Defense Counsel within the Office of the State Public Defender or a designee;

"(m) A member of the Mississippi Sheriffs' Association appointed by its executive director;

"(n) A district attorney or an assistant district attorney, appointed by the Attorney General;

"(o) A member of the Mississippi Association of Supervisors, chosen by the Executive Director of the Mississippi Association of Supervisors;

"(p) A member representing the Southern Poverty Law Center appointed by the Managing Attorney for Mississippi;

"(q) A member of the Mississippi Association for Justice appointed by its executive committee president;

"(r) A member of the Mississippi Association of Chiefs of Police appointed by its executive board president; and

"(s) The President of the Mississippi Prosecutors Association or a designee.

"(2) The appointed members of the task force must be appointed within thirty (30) days of the effective date of this act. The members shall be a part of the task force for the life of the task force. Any vacancy in the task force shall not affect its powers, but shall be filled in the same manner prescribed above. The task force shall hold its first meeting within sixty (60) days of the effective date of this act, on the call of the Commissioner of Corrections. At the first meeting, the task force shall elect from among its membership a permanent chairperson and any other officers, if any, determined to be necessary. A majority of the membership of the task force shall constitute a quorum, and shall meet at the call of the chairperson, or upon an affirmative vote of a majority of the task force. All members must be notified in writing of all meetings at least five (5) days before the date on which a meeting of the task force is scheduled.

"(3) The task force shall study and make recommendations for improving the relationship between the corrections system and the criminal justice system in Mississippi. In making those recommendations, the task force shall:

"(a) Undertake a comprehensive review of all areas of the state's corrections system, including state, local and tribal governments' corrections practices and policies regarding sentencing guidelines;

"(b) Review the total number of offender populations in Mississippi correctional facilities to determine which offenders receive or serve differing sentences for the same crimes, enumerating any discrepancies in sentencing for conviction of the same crimes and documenting the percentage of offenders whose sentence was a result of mandatory minimum sentencing;

"(c) Make findings regarding such review and recommendations for changes in oversight, policies, practices and laws designed to prevent, deter and reduce crime and violence, reduce recidivism, improve cost-effectiveness and ensure the interests of justice at every step of the criminal justice system;

"(d) Identify critical problems in the criminal justice system and assess the cost-effectiveness of the use of state and local funds in the criminal justice system;

"(e) Consult with state, local and tribal government and nongovernmental leaders, including law enforcement officials, legislators, judges, court administrators, prosecutors, defense counsel, probation and parole officials, criminal justice planners, criminologists, civil rights and liberties organizations, formerly incarcerated individuals and corrections officials; and

"(f) Conduct a comprehensive review of the drug court programs, intensive supervision programs and any other alternative incarceration programs utilized in the state and provide detailed recommendations regarding the appropriate funding to support those programs.

"The Mississippi Department of Corrections shall provide appropriate staff support to assist the task force in carrying out its duties. The Commissioner of Corrections shall designate an appropriate employee to act as a point of contact for the provision of staff support to the task force. In addition, the task force may consult with employees of any state agency or department necessary to accomplish the task force's responsibilities under this section.

"(4) The task force shall prepare and submit a final report that contains a detailed statement of findings, conclusions and recommendations of the task force to the Legislature, the Governor and to local and tribal governments by December 31, 2013. It is the intention of the Legislature that, given the importance of the matters before the task force, the task force should work toward unanimously supported findings and recommendations and the task force shall state the vote total for each recommendation contained in its report to the Legislature. The report submitted under this subsection shall be made available to the public.

"The recommendations for improving the relationship between the corrections system and the criminal justice system in Mississippi may include proposals for specific statutory changes for improving the effectiveness of the criminal justice system and methods to foster cooperation among state agencies and between the state and local governments. The task force shall be abolished upon submission of the report to the Governor and the Legislature."

Cross References — Regulations relating to penitentiary-made goods, see §§ 47-5-301 et seq.

Provisions relative to prison system overcrowding and the exercise of powers which tend to reduce prison system population or expand operating capacity during states of emergency, see §§ 47-5-701 et seq.

Power of court to suspend sentence and place defendant on probation, see § 47-7-33.

JUDICIAL DECISIONS

1. In general.
2. Sovereign immunity.

1. In general.

Section 99-19-39, which governs the detention of a convict pending appeal, confers no right in a convicted felon to be incarcerated in county jail pending an appeal to the Supreme Court; construing § 99-19-39 to create such a right would place that statutory section in conflict with the provisions of § 47-5-1 et seq. which create a comprehensive correctional system to deal with the incarceration of all felony offenders; under the comprehensive legislative scheme setting up the Mississippi Department of Corrections, the circuit court sentences to the Department and not to any particular facility, and neither the circuit court nor the Supreme Court can order the Department to return a prisoner duly committed to its custody to county jail as a matter of right. Nicolaou v. State, 596 So. 2d 863 (Miss. 1992).

There is a constitutional requirement for state defendants, in a suit by prison inmates for certain prison reforms, to establish certain time-tables for and proceed to implement (a) adequate medical facilities and services, and (b) the reduction of overcrowding of prison inmates at residential camps as well as the elimination of those residential camps unfit for human habitation. Gates v. Collier, 390 F. Supp. 482 (N.D. Miss. 1975), aff'd, 525 F.2d 965 (5th Cir. 1976).

An opinion in a class action brought by inmates of the state penitentiary against the superintendent of the penitentiary, members of the Mississippi Penitentiary Board, and the governor (joined in by the United States as plaintiff intervenor) describes in some detail the undesirable and unconstitutional conditions existing at the penitentiary. The trial court granted both prohibitory and affirmative relief and retained jurisdiction to ensure that the court orders are complied with. Gates v. Collier, 349 F. Supp. 881 (N.D. Miss. 1972), aff'd, 489 F.2d 298 (5th Cir. 1973), aff'd, 501 F.2d 1291 (5th Cir. 1974), supplemented, 423 F. Supp. 732 (N.D. Miss. 1976), aff'd and remanded, 548 F.2d 1241 (5th Cir. 1977).

2. Sovereign immunity.

Mississippi Department of Corrections (MDOC) was considered an arm of the state for purposes of Eleventh Amendment immunity because state statute, Miss. Code Ann. §§ 47-5-1 et. seq., considered the MDOC an arm of the state; additionally, the MDOC was funded by the state. The department was responsible for the confinement of prisoners throughout the state; it apparently had the authority to sue and be sued in its own name, and, finally, it was authorized by Miss. Code Ann. § 47-5-5 to hold and use property. Morgan v. Mississippi, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 74001 (S.D. Miss. Feb. 12, 2008), amended by 2009 U.S. Dist. LEXIS 55347 (S.D. Miss. June 16, 2009).

RESEARCH REFERENCES

ALR. Censorship of convicted prisoners' "legal" mail. 47 A.L.R.3d 1150.

Censorship of convicted prisoners' "nonlegal" mail. 47 A.L.R.3d 1192.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 72, 83, 90, 99, 107, 111.

60 Am. Jur. 2d, Penal and Correctional Institutions §§ 4, 5, 7.

15A Am. Jur. Legal Forms 2d, Public Works and Contracts §§ 216:228 (use of materials produced in penal or correctional institutions).

CJS. 67A C.J.S., Pardon and Parole §§ 15, 16 et seq.

72 C.J.S., Prisons and Rights of Prisoners § 3.

§ 47-5-2. Corrections Investigative Taskforce created.

(1) There is hereby created the Corrections Investigative Taskforce which shall consist of the following members: the Attorney General; State Auditor; the Chief Executive Officer of the Bureau of Narcotics, or his designee; the Chief Executive Officer of the Department of Public Safety, or his designee; the Chairman of the Senate Corrections Committee and the Chairman of the House Penitentiary Committee.

(2) The taskforce shall:

(a) Conduct or cause to be conducted periodic investigation of the Department of Corrections;

(b) Study and make recommendations on correctional policies, including, but not limited to:

(i) Drug trafficking;

(ii) Inmate gang activity;

(iii) Internal accounting and control procedures; and

(iv) Correction services and programs.

(c) Request assistance from the Department of Audit, Office of the Attorney General, Department of Public Safety, Bureau of Narcotics and any other state agency. Any state agency shall comply with a request for assistance to the fullest extent possible.

(3) The taskforce shall submit its findings and recommendations to the Governor and the Legislature no later than January 15 of each year.

SOURCES: Laws, 1995, ch. 416, § 3, eff from and after passage (approved March 15, 1995).

§ 47-5-3. Facilities of the correctional system; their purposes and locations.

The plantation known as Parchman owned by the state in Sunflower and Quitman Counties, and in such other places as are now or may be hereafter owned or operated by the state for correctional purposes shall constitute the facilities of the correctional system for the custody, punishment, confinement at hard labor and reformation of all persons convicted of felony in the courts of the state and sentenced to the custody of the department, and whenever the term "penitentiary" or "state penitentiary" appears in the laws of the State of Mississippi, it shall mean any facility under the jurisdiction of the Department of Corrections which is used for the purposes described herein.

SOURCES: Codes, 1942, § 7922; Laws, 1964, ch. 378, § 2 1976, ch. 440, § 19; reenacted, Laws, 1981, ch. 465, § 2; Laws, 1984, ch. 397; reenacted, Laws, 1984, ch. 471, § 2; reenacted, Laws, 1986, ch. 413, § 2, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1986, ch. 491, § 1, effective from and after passage (approved April 15, 1986), provides as follows:

"SECTION 1. The Mississippi Board of Corrections is hereby authorized to convey the right-of-way on the grounds of the Mississippi State Penitentiary, as is hereinafter described, exclusive of gas, water, mineral and subsurface rights, to Sunflower County, Mississippi, for the purpose of completing the Federal Aid Public Road Project No. RS-2847(2)B- Lombardy Road. Said specific right-of-way is described as follows:

"4.794 acres, more or less, located in Section 15, Township 24 North, Range 4 West, Sunflower County, Mississippi, and more particularly described as follows:

"Begin at a point on the centerline of the Lombardy Road at Station 512+ 89.14, with said point being the Southwest corner of Section 15; thence North 00 degrees 33′ 36″ East 410.86 feet to Station 517+ 00 along the said centerline; thence around a 00 degrees 24′ 30″ curve to the left a distance 399.97 feet to Station 520+ 99.97 along the said centerline; thence around a 00 degrees 24′ 30″ curve to the right a distance 399.97 feet to Station 524+ 99.94 along the said centerline; thence North 00 degrees 33′ 36″ East 2,672.71 feet to Station 551+ 72.65 along the said centerline; thence around a 00 degrees 30′ 00″ curve to the left at a distance 248.67 feet to Station 554+ 21.32 along the said centerline; thence North 00 degrees 41′ 00″ West 578.68 feet to Station 560+ 00 along the said centerline; thence West 10 feet to Station 560+ 00 thence North 00 degrees 41′ 00″ West 100 feet to Station 561+ 00; thence East 10 feet to Station 561+ 00, thence North 00 degrees 41′ 00″ West 410 feet to Station 565+ 10 along the said centerline; thence West 80 feet to Station 565+ 10; thence South 00 degrees 41′ 00″ East 1,688.68 feet to Station 554+ 21.32; thence around a 00 degrees 30′ 00″ curve to the right a distance 248.67 feet to Station 551+ 72.65; thence South 00 degrees 33′ 36″ West 2,672.71 feet to Station 524+ 99.94; thence around a 00 degrees 24′ 30″ curve to the left at a distance 399.97 feet to Station 520+ 99.97; thence around a 00 degrees 24′ 30″ curve to the right at a distance 399.97 feet to Station 517+ 00.00; thence South 00 degrees 33′ 36″ West 410.86 feet to Station 512+ 89.14; thence West 40.00 feet to Station 512+ 89.14 to the said centerline and the Point of Beginning.

"Less and Except: 2.996 acres, more or less, existing road right-of-way.

"The Attorney General shall assist in the preparation of legal documents necessary to transfer said right-of-way under the terms specified herein."

Laws of 1993, ch. 320, § 1, eff from and after passage (approved March 11, 1993) provides as follows:

"SECTION 1. The Governor's Office of General Services, Department of Finance and Administration, is authorized in its discretion to sell to the Department of Corrections real property described as follows:

"Certain property forming a portion of the right-of-way of the Illinois Central Gulf Railroad Company's abandoned Sunflower District ('LD' Line), said property situated in the East half of the Northwest Quarter and the Southwest Quarter of Section 27; West half of the West half of Section 34; and the Southeast Quarter of the Southeast Quarter of Section 33, Township 24 North, Range 3 West, and in the Northwest Quarter of the Northwest Quarter of Section 3, Township 23 North, Range 3 West, Choctaw Meridian, Sunflower County, Mississippi, is described as all of the Grantor's original 100′ wide right-of-way lying 50′ on either side of the centerline of Grantor's main tract as originally located and extending southwesterly from the North line of the Northeast Quarter of the Northwest Quarter of said Section 27 approximately 3629′ as measured along said main tract centerline to a right-of-way width change in Grant Street, Parchman, Mississippi; thence continuing southwesterly of said parcel 200′ wide lying 50′ to the Southeast and 150′ to the Northwest of said main tract centerline 2000′ as measured along said main tract centerline to a right-of-way width change; thence continuing southwesterly of said parcel 100′ wide lying 50′ on either side of said main tract centerline approximately 5213′ as measured along said main tract centerline to the South line of the aforesaid Southeast Quarter of the Southeast Quarter of Section 33 and to the West line of the aforesaid Northwest Quarter of the Northwest Quarter of Section 3."

Laws of 1993, ch. 339, § 1, eff from and after July 1, 1993, provides as follows:

"SECTION 1. The Mississippi Department of Corrections is authorized to convey to the United States of America 34.88 acres of state-owned property situated in the NE ¼ of Section 4, Township 5 North, Range 1 West, Hinds County, Mississippi, more particularly described as follows:

"BEGINNING at the NE corner of Section 4, Township 5 North, Range 1 West, Hinds County, Mississippi; run thence with the east boundary of said Section of 4 S 01 degree 06′ 20″ E, 1481.38 feet; thence N 53 degrees 37′ W, 223.1 feet; thence N 56 degrees 28′ 30″ W, 300.0 feet; thence N 59 degrees 20′ W, 300.4 feet; thence N 56 degrees 28′ 39″ W, 200.0 feet; thence N 52 degrees 40′ W, 601.3 feet; thence N 54 degrees 11′ W, 500.4 feet; thence N 56 degrees 28′ 30″ W, 434.2 feet to the north boundary of said Section 4; thence with said north boundary N 89 degrees 28′ 30″ E, 2072.21 feet to the point of beginning, containing 34.88 acres, more or less. Subject to a 27.08 acre easement for Interstate Highway 20. Subject to a 0.29 acre easement for pipelines. This is the same parcel of land conveyed to the United States of America by the City of Jackson, Mississippi, by deed dated November 18, 1983, on record in the Hinds County Real Property Public Records in Book 2954, beginning on page 567."

JUDICIAL DECISIONS

1. In general.

Without waiving the procedural bar to the inmate's claim that his sentence was unconstitutional, the court held that the inmate was properly charged under Miss. Code Ann. § 97-9-45 and entered a plea of guilty to the escape; the sentence of three years was well within the maximum prescribed by the statute, which referred to prisoners sentenced to the Mississippi Department of Corrections and allowed a maximum sentence of five years, and thus the inmate was not entitled to post-conviction relief; although the inmate was in custody and on a work program for a county at the time of the escape, the inmate was considered under the Department's jurisdiction for purposes of § 97-9-45 because (1) the inmate's original burglary sentence required imprisonment in the "penitentiary" under Miss. Code Ann. § 97-17-23, which term meant any facility under the jurisdiction of the Department pursuant to Miss. Code Ann. § 47-5-3, (2) commitment to any institution within the jurisdiction of the Department was to the

Department, not a particular institution pursuant to Miss. Code Ann. § 47-5-110, and (3) under Miss. Code Ann. § 47-5-541, the Department recommended rules concerning the participation of inmates in work programs. Gardner v. State, 848 So. 2d 900 (Miss. Ct. App. 2003).

Section 99-19-39, which governs the detention of a convict pending appeal, confers no right in a convicted felon to be incarcerated in county jail pending an appeal to the Supreme Court; construing § 99-19-39 to create such a right would place that statutory section in conflict with the provisions of § 47-5-1 et seq. which create a comprehensive correctional system to deal with the incarceration of all felony offenders; under the comprehensive legislative scheme setting up the Mississippi Department of Corrections, the circuit court sentences to the Department and not to any particular facility, and neither the circuit court nor the Supreme Court can order the Department to return a prisoner duly committed to its custody to county jail as a matter of right. Nicolaou v. State, 596 So. 2d 863 (Miss. 1992).

RESEARCH REFERENCES

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 50-55, 58, 59, 60, 62.

CJS. 67A C.J.S., Pardon and Parole §§ 45-50, 54, 55.

§ 47-5-4. Definitions.

For purposes of this chapter, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) “Adult” shall mean a person who is eighteen (18) years of age or older, or any person convicted of any crime not subject to the provisions of the Youth Court Law, or any person “certified” to be tried as an adult by any youth court in the state.

(b) “Juvenile,” “minor” or “youthful” shall mean a person less than eighteen (18) years of age.

(c) “Offender” shall mean any person convicted of a crime or offense under the laws and ordinances of the state and its political subdivisions.

(d) “Facility or institution” shall mean any facility for the custody, care, treatment and study of offenders which is under the supervision and control of the Department of Corrections, including but not limited to the State Penitentiary property located in Sunflower and Quitman Counties.

(e) “Detention” shall mean the temporary care of juveniles and adults who require secure custody for their own or the community’s protection in a physically restricting facility prior to adjudication, or retention in a physically restricting facility upon being taken into custody after an alleged parole or probation violation.

(f) “Unit of local government” shall mean a county, city, town, village, or other general purpose political subdivision of the state.

(g) “Department” shall mean the Mississippi Department of Corrections.

(h) “Commissioner” shall mean the Commissioner of Corrections.

(i) “Correctional system” shall mean the facilities, institutions, programs and personnel of the Department of Corrections utilized for adult offenders who are committed to the custody of the department.

SOURCES: Laws, 1976, ch. 440, § 3; reenacted, Laws, 1981, ch. 465, § 3; reenacted, Laws, 1984, ch. 471, § 3; reenacted, Laws, 1986, ch. 413, § 3; Laws, 1988, ch. 504, § 3, eff from and after passage (approved May 6, 1988).

Cross References — Youth Court Law, see §§ 43-21-101 et seq.

§ 47-5-5. Limited centralization of facilities.

The commissioner, as soon as possible after passage of this section, shall prepare a plan to bring about the limited centralization of facilities within the state correctional system grounds at Parchman, Mississippi. The commissioner is authorized and empowered to use any state funds appropriated for such purposes, together with any available federal funds appropriated by the United States Congress for improvement of correctional institutions to construct modern security facilities for housing of offenders to the end that the state correctional system achieves the greatest degree of security for said offenders. Provided, however, that no new facility to house offenders shall be constructed within two-fifths (⅖) of a mile of any other offender camp. The commissioner shall bring about centralization of food facilities, recreational activities, utility services and other related facilities and correctional services that are presently decentralized within the correctional system.

It is the intent of the Mississippi Legislature that the commissioner shall fully utilize existing knowledge, architectural plans and expertise currently available with the Federal Bureau of Prisons and the Law Enforcement Assistance Administration to the end that the State of Mississippi shall have an efficient, modern, and properly secure state correctional system.

The commissioner is authorized to receive and disburse private and public grants, gifts and bequests which may be available to this state for correctional facilities, offender rehabilitation purposes and related purposes, which said sum so received shall be subject to all of the laws applicable to the State Fiscal Management Board.

SOURCES: Codes, 1942, § 7926.5; Laws, 1971, ch. 524, § 11; Laws, 1976, ch. 440, § 20; reenacted, Laws, 1981, ch. 465, § 4; reenacted, Laws, 1984, ch. 471, § 4; reenacted and amended, Laws, 1986, ch. 413, § 4, eff from and after passage (approved March 28, 1986).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Laws of 1973, ch. 472, §§ 1-4, eff from and after passage (approved April 12, 1973), provide as follows:

"SECTION 1. The purpose of this legislation is to outline and structure a long-range proposal in addition to certain immediate objectives for improvements at the state penitentiary so as to implement provisions of state law and provide modern and efficient penal facilities.

"The more specific purposes of this legislation are to:

"(a) Provide a time schedule for the orderly, efficient and deliberate construction of new capital facilities and for the renovation of certain existing facilities at the state penitentiary.

"(b) Implement the provisions of section 47-5-5 as enacted by the 1971 Regular Session of the Mississippi Legislature.

"(c) Provide for the maximum internal security of inmates at the state penitentiary by creating a unit of security facilities to aid in phasing out the trusty inmate guard system.

"(d) Unitize supportive functions so as to minimize the basic cost for such facilities and to create an efficient, effective security system in addition to other operations.

"SECTION 2. The intent of the legislature in enacting the provisions of this act is that such provisions, including all construction and renovation, shall be completed and that each of the phases of the development provided in this act shall be accomplished adequately and expeditiously to implement the provisions of this act. New facilities whose construction is authorized by this act shall be constructed on penitentiary lands owned by the state in Sunflower County and implement the provisions of section 47-5-5, as enacted by the 1971 Regular Session of the Mississippi Legislature. It being the intent of the legislature that the state building commission develop and present to the legislature a long-range capital improvements construction plan for the Mississippi State Penitentiary providing for the construction of all facilities in an orderly, contiguous pattern so that all of the vital facilities constructed and utilized will be constructed in the most economical and efficient manner. All facilities located on these tracts shall, where possible, be placed at least one (1) mile apart, but in no event shall they be closer than two-fifths (⅖) of a mile, as provided in section 47-5-5. The facilities which will house security, administrative and supportive systems shall be designated the central complex.

"SECTION 3. The state building commission shall, using funds appropriated by the legislature, federal matching or other federal funds, federal grants, or other available funds from whatever source provided, construct, renovate and make the following improvements at the state penitentiary, provided, however, that the grouping of improvements into phases shall not be construed so as to require the completion of all improvements within a phase before improvements in a subsequent phase may be initiated, except that construction and renovation of the projects in the Phase I shall receive priority over the projects authorized for preplanning in Phase II.

PHASE I

"(1) Training Facilities	$45,000.00
"(2) Classification and Filing	55,000.00
"(3) Camp Renovation	250,000.00
"(4) Security Building	125,000.00
"(5) Construction of a first offenders camp	700,000.00
"(6) Complete renovation and additional construction to penitentiary hospital at present location	500,000.00
"(7) Central food and service facility to be constructed in connection with central complex	350,000.00
"(8) Security Fencing	100,000.00
"(9) One (1) Maximum security unit	875,000.00
"Total Expenditure for Implementation of Phase I.	$3,000,000.00

"All of the above to be constructed in accordance with Section 2.

PHASE II-PREPLANNED PROJECTS.

"(1) Construction of two (2) medium security inmate facilities.

"(2) Development of a new water system and sewerage treatment facility to be used in connection with central complex.

"(3) Construction of security fence surrounding entire complex of facilities.

"(4) Central laundry facility for prison system.

"The projects authorized in Phase II shall be preplanned prior to any construction or renovation. All of the above to be constructed in accordance with section 2.

"Provided, however, the state building commission, with the concurrence of the Mississippi Penitentiary Board, or its successor, is hereby authorized to delete line items provided as set out above, and authorized to use the funds released by said deletion to allow construction of facilities at the Mississippi State Penitentiary based on priority, design and identifiable needs. (Amended Laws, 1974, ch. 528, § 1, eff from and after passage (approved April 4, 1974)).

"SECTION 4. The Building Commission and the governing authorities of the State Penitentiary shall initiate and complete construction of the limited unitizing facilities at the penitentiary as hereinabove provided, and shall initiate and complete an orderly phaseout of agricultural camps or units for inmate housing so that only those units which may be satisfactorily renovated, as determined by competent engineers and architects, shall be retained. It is the intent of the Legislature that all available materials, equipment, supplies and other facilities, including prison labor, shall be fully utilized in the capital improvements and construction herein authorized."

Laws of 1983, ch. 464, §§ 1-3, effective from and after passage (approved April 5, 1983), provide as follows:

"SECTION 1. The State Building Commission or its successor, using any available funds from whatever source, shall:

"(a) Construct and equip a 500-man Minimum Housing Unit;

"The Minimum Housing Unit location shall be at the Mississippi State Penitentiary at Parchman, Mississippi, or at a site selected by the State Building Commission or its successor in Yalobusha County on land which is hereafter donated to the state specifically for the location of such facility 9,400,000.00

"(b) Construct and equip twelve (12) 75-man Community Work Centers as designated by the State Building Commission or its successor 6,230,000.00

"(c) Construct and equip a 505-Capacity Unit that includes the following facilities:

"(i) A 130-man and woman Reception and Classification Unit;

"(ii) A 250-woman Women's Housing Unit;

"(iii) A 125-man Minimum Housing Unit;

"(iv) Necessary support facilities for the entire 505-Capacity Unit;

"The facility location shall be at a site selected by the State Building Commission or its successor in any county on land presently owned by the state or on land which is hereafter donated to the state specifically for the location of such a facility 25,250,000.00

"(d) Construct and equip a 172-man Medium Housing Facility and an Alcohol and Drug Education Facility, both located at the existing Unit 26, at the Mississippi State Penitentiary at Parchman, Mississippi 2,200,000.00

"(e) Renovate, construct additions and equip existing Units 4, 16, 22 and 23 at the Mississippi State Penitentiary at Parchman, Mississippi 2,000,000.00

"(f) Construct improvements to the entire Utility System including wastewater, water, electrical and natural gas at the Mississippi State Penitentiary at Parchman, Mississippi 2,000,000.00

"(g) Construct and equip a new administration facility at the Mississippi State Penitentiary at Parchman 2,000,000.00

"(h) Renovate and equip old hospital at the Mississippi State Penitentiary at Parchman, Mississippi, for use as a minimum housing unit to house approximately 85 inmates 1,400,000.00

"(i) Have as a contingency for project construction and all necessary administrative, legal and other expenses incidental and related to the issuance of any bonds .520,000.00

"TOTAL $51,000,000.00

"If there are excess funds available with respect to any project listed in this section after the contract for such project has been let, such excess funds shall be paid into the Correctional Facilities Construction Fund as created by Section 6, Chapter 542, Laws of 1983, to be expended for the construction of inmate housing facilities as provided in

Senate Bill No. 2786, 1986 Regular Session, if such bill is enacted into law; provided, however, if such bill is not enacted into law, then such excess funds shall be transferred to the General Fund in the State Treasury. (Amended by Laws, 1986, ch. 475, eff from and after passage, approved April 14, 1986).

"SECTION 2. (1) The State Building Commission shall not designate the site of a new community work center unless the commission has notified, by certified mail, return receipt requested, each member of the board of supervisors of the county or the governing authorities of the municipality in which the center is to be located. Said board of supervisors or governing authority shall have the opportunity within thirty (30) days after the date of such mailing, but not thereafter, to disapprove the designated site.

"(2) If the Building Commission decides to locate the facilities described in paragraphs (a) or (c) of Section 1 of this act on land which is hereafter donated to the state specifically for the location of such a facility then, prior to the commencement of the construction of such facilities, the board of supervisors of the county in which such land is located shall adopt a resolution calling for an election on the question of constructing the facilities in such county. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such county. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in the resolution for the election and the last publication shall be made not more than seven (7) days prior to such date. Such election shall be held, as far as practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of the county may vote, and the ballots used at such election shall have printed thereon a brief statement of the facilities to be constructed and the words "For the construction of the facilities in (here insert county name) County" and "Against the construction of the facilities in (here insert county name) County." The voter shall vote by placing a cross (x) or check mark (v) opposite his choice on the proposition. When the results of the election on the question of the construction of the facilities shall have been canvassed by the election commissioners of the county and certified by them to the board of supervisors, it shall be the duty of the board of supervisors to determine and adjudicate whether or not a majority of the qualified electors who voted thereon in such election voted in favor of the construction of the facilities in such county. Unless a majority of the qualified electors who voted in such election shall have voted in favor of the construction of the facilities in such county, then such facilities shall not be constructed in such county.

"(3) It is the intent of the Legislature, in cases in which the State Building Commission selects a site for a facility as described in paragraphs (a) or (c) of Section 1 of this act, that no notice to the board of supervisors of the county or the governing authorities of the municipality in which such facility is to be located shall be required other than such notice as may be required pursuant to subsection (2) of this section in regard to lands donated to the state, and there shall be no authority for such board or governing authorities to either approve or disapprove designated sites and/or construction of those facilities described in paragraphs (a) or (c) of Section 1 of this act.

"SECTION 3. No state funds from any source whatsoever shall be expended to purchase land for the location of any of the facilities the construction of which is authorized in this act; but such facilities shall be located upon land which is already owned by the state or upon land which is donated to the state or leased to the state for a nominal consideration for a period of not less than twenty-five (25) years specifically for the location of such facilities."

Laws of 1983, ch. 542, § 6, provides as follows:

"SECTION 6. There is hereby created in the State Treasury a special fund to be designated as the 'Correctional Facilities Construction Fund' into which shall be deposited Two Million Dollars ($2,000,000.00) each month beginning August 15, 1983, through July 15, 1984, and One Million Dollars ($1,000,000.00) each month beginning August 15, 1984, through November 15, 1986, from sales tax collections. Any monies as may be appropriated by the Legislature shall be deposited by the State Treasurer into the 'Correctional Facilities Construction Fund.' The proceeds of the sale of bonds under Senate Bill No. 3038 [Chapter 456], 1987 Regular Session, shall be transferred by the State Bond Commission into the 'Correctional Facilities Construction Fund.' Such funds shall be used by the Bureau of Building, Grounds and Real Property Management of the Office of General Services to defray the costs of the construction, equipping, improvement and renovation of prison facilities pursuant to Senate Bill 2698 [Chapter 464], Regular Session of 1983, Senate Bill No. 2786 [Chapter 502], 1986 Regular Session, and Senate Bill No. 3038 [Chapter 456], 1987 Regular Session. The expenditure of monies out of the Correctional Facilities Construction Fund shall be under the direction of the Office of General Services as spread on its minutes, and such funds shall be paid by the State Treasurer upon warrants issued by the State Fiscal Management Board, which warrants shall be issued upon requisitions signed by the Executive Director of the Office of General Services. Any unencumbered funds in the Correctional Facilities Construction Fund on July 1, 1987, shall be transferred to the State General Fund." (Amended by Laws, 1986, ch. 502, § 4; 1987, ch. 456, § 17).

Laws of 1986, ch. 502, §§ 1-3, provide as follows:

"SECTION 1. The Office of General Services, using the funds in the 'Correctional Facilities Construction Fund' as created in Section 6, Chapter 542, Laws of 1983, shall provide for, by construction, lease, lease-purchase agreement or otherwise and shall equip:

"(a) Housing and necessary support facilities for the number of medium security male inmates as deemed necessary by the Mississippi Board of Corrections, not to exceed five hundred (500) medium security male inmates committed to the custody of the Department of Corrections, at a site selected by the Office of General Services on lands in Greene County, Mississippi;

"(b) Housing and necessary support facilities for the number of maximum security inmates as deemed necessary by the Mississippi Board of Corrections, not to exceed one thousand (1,000) maximum security inmates at the State Penitentiary at Parchman, Mississippi;

"(c) Laundry and kitchen facilities and associated access roads at the State Penitentiary at Parchman, Mississippi;

"(d) Renovation/upgrading of existing security facilities at the State Penitentiary at Parchman, Mississippi;

"(e) Upgrading of existing support systems at the State Penitentiary at Parchman, Mississippi, including wastewater system improvements, water system improvements, fire protection water system improvements, dry storage, telephone system improvements and renovation of the old administration building; and

"(f) Building materials and supplies for inmate construction program projects."

(Amended by Laws, 1987, ch. 456, § 4).

"SECTION 2. (1) Upon the selection of a proposed site for the inmate housing facilities described in paragraphs (a) and (b) of Section 1 of this act, the Bureau of Building, Grounds and Real Property Management of the Office of General Services shall notify the board of supervisors of the county or counties in which such facility is proposed to be located and shall publish a notice as hereinafter set forth in a newspaper having general circulation in such county. Such notice shall include a description of the tract of land in the county whereon the facility is proposed to be located, the nature and size of the facility and the date on which the determination of the Bureau of Building, Grounds and Real Property Management shall be final as to the location of such facility, which date shall not be less than forty-five (45) days following the first publication of such notice. Such notice shall include a brief summary of the provisions of this section pertaining to the petition for an election on the question of the location of the inmate housing facility in such county. Such notice shall be published not less than one (1) time each week for at least three (3) consecutive weeks in at least one (1) newspaper published in such county.

"If no petition requesting an election is filed prior to the date of final determination stated in such notice, then the bureau shall give final approval to the location of such facilities.

"If at any time prior to the aforesaid date a petition signed by twenty percent (20%), or fifteen hundred (1500), whichever is less, of the qualified electors of the county involved shall be filed with the board of supervisors requesting that an election be called on the question of locating such facilities, then the board of supervisors shall adopt a resolution calling an election to be held within such county upon the question of the location of such facilities. Such election shall be held, as far as practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of the county may vote, and the ballots used at such election shall have printed thereon a brief statement of the facilities to be constructed and the words "For the construction of the facilities in (here insert county name) County" and "Against the construction of the facilities in (here insert county name) County." The voter shall vote by placing a cross (x) or check mark (v) opposite his choice on the proposition. When the results of the election on the question of the construction of the facilities shall have been canvassed by the election commissioners of the county and certified by them to the board of supervisors, it shall be the duty of the board of supervisors to determine and adjudicate whether or not a majority of the qualified electors who voted thereon in such election voted in favor of the construction of the facilities in such county. Unless a majority of the qualified electors who voted in such election shall have voted in favor of the construction of the facilities in such county, then such facilities shall not be constructed in such county. The provisions of this subsection shall stand repealed from and after June 30, 1988.

"(2) Before any funds shall be expended under Section 1 for the construction of such correctional facilities, the Bureau of Building, Grounds and Real Property Management, with cooperation of the Mississippi Department of Corrections, shall utilize inmates for construction to the extent such labor is available. The Mississippi Department of Corrections shall determine and provide to the Bureau of Building, Grounds and Real Property Management, the name, the number and construction skills of inmates, and shall also provide security officers to be in attendance during all hours when inmates are involved in construction. When necessary construction skills are not available from the inmate population, the Bureau of Building, Grounds and Real Property Management may contract with private contractors or mechanics to perform necessary construction work."

[SECTION 3. Repealed by its own terms from and after June 30, 1988.].

Laws of 1987, ch. 456, §§ 1-3, 5-16, provide as follows:

"SECTION 1. The Legislature finds and declares that:

"(a) The overcrowding of state prisoners in county jails has plagued the sheriffs, the Mississippi Department of Corrections and the Legislature for a decade.

"(b) In 1987, for the first time in history, the Mississippi Department of Corrections has over 7,000 inmates in its custody, with over 1,200 state inmates in local jails.

"(c) During the past decade, the Legislature has appropriated over $31,000,000.00 in payments to the sheriffs for housing state prisoners, while over 1,000 new prison beds could have been constructed with such funds.

"(d) The most pressing physical facility need at this time is for a substantial increase in the number of maximum security housing at Parchman, inasmuch as Mississippi's percentage of maximum security inmate beds is less than the national average; and

"(e) The Mississippi Department of Corrections is in need of a comprehensive, long-term construction program.

"SECTION 2. As used in this act, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

"(a) 'General obligation bonds' shall mean bonds of the State of Mississippi, to the repayment of which, both as to principal and interest, the full faith, credit and taxing power of the State of Mississippi are irrevocably pledged until the principal and interest is paid in full.

"(b) 'Office of General Services' or 'office' shall mean the Governor's Office of General Services, acting through its Bureau of Building, Grounds and Real Property Management.

"(c) 'State Fiscal Management Board' shall mean the membership of the State Fiscal Management Board acting in their capacity as the state's Public Procurement Review Board, as provided in Section 27-104-7, Mississippi Code of 1972.

"SECTION 3. The Office of General Services shall have the power and is hereby authorized, at one time or from time to time, with the approval of the State Fiscal Management Board spread upon its minutes, to declare the necessity for issuance of negotiable general obligation bonds of the State of Mississippi in an aggregate amount not to exceed Fifty-six Million Six Hundred Fifty Thousand Dollars ($56,650,000.00) to provide funds for the purpose of paying all or any part of the cost of constructing and equipping the correctional facilities authorized under Section 1, Chapter 502, Laws of 1986, (supra, this note) as amended by this act.

"SECTION 5. (1) In the construction of the correctional facilities described in Section 4 of this act, the Office of General Services, in conjunction with the Mississippi Department of Corrections, shall utilize inmates for construction to the extent such labor is available. The Mississippi Department of Corrections shall: establish, maintain and implement a program for training and utilizing inmates in construction projects; determine and provide to the Office of General Services the name, the number and construction skills of inmates; and provide security officers to be in attendance during all hours when inmates are involved in construction. When necessary construction skills are not available from the inmate population, the Office of General Services may contract with private contractors or mechanics to perform necessary construction work.

"(2) In the planning, design, procurement and construction of the facilities described in Section 4 of this act, the Office of General Services shall make maximum utilization of plans and specifications prepared for, and processes employed in, completed or on-going construction projects for the Mississippi Department of Corrections.

"SECTION 6. Upon the adoption of a resolution by the Office of General Services and the State Fiscal Management Board declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by this act, the office shall deliver a certified copy of such resolution or resolutions to the State Bond Commission. Upon the receipt of same, the State Bond Commission shall act as the issuing agent, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, pay all fees and costs incurred in such issuance and sale, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. For the payment of such bonds and the interest thereon, the full faith, credit and taxing power of the State of Mississippi are hereby irrevocably pledged. If the Legislature shall find that there are funds available in the General Fund of the Treasury of the State of Mississippi in amounts sufficient to pay maturity, principal and accruing interest of such general obligation bonds and if the Legislature shall appropriate such available funds for the purpose of paying such maturity, principal and accruing interest, then the principal, maturity and accruing interest of such bonds shall be paid from appropriations made from the General Fund of the Treasury of the State of Mississippi by the Legislature thereof; but if there are not available sufficient funds in the General Fund of the Treasury of the State of Mississippi to pay the maturity, principal and accruing interest of such bonds, or if such funds are available and the Legislature should fail to appropriate a sufficient amount thereof to pay such principal and accruing interest as the same becomes due, then, and in that event, there shall annually be levied upon all taxable property within the State of Mississippi an ad valorem tax at a rate sufficient to provide the funds required to pay the bonds at maturity and the interest thereon as the same accrues. Such bonds shall bear such date or dates, be in such denomination or denominations, bear interest at such rate or rates, be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times, be redeemable prior to maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by resolution of the State Bond Commission. Such bonds shall be signed by the Chairman of the State Bond Commission or by his facsimile signature, and the official seal of the State Bond Commission shall be affixed thereto, attested by the Secretary of the State Bond Commission. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of such officers. Whenever any such bonds shall have been signed by the officials herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

"SECTION 7. All general obligation bonds of the State of Mississippi and interest coupons issued under the provisions of this act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State of Mississippi. Such bonds and the income therefrom shall be exempt from all taxation within the State of Mississippi.

"SECTION 8. The State Bond Commission may sell such bonds in such manner and for such price as it may determine to be for the best interest of the State of Mississippi, but no such sale shall be made at a price less than par plus accrued interest to date of delivery of the bonds to the purchaser. Notice of the sale of any such bonds shall be published at least one time not less than ten (10) days prior to the date of sale and shall be so published in one or more newspapers having a general circulation in the City of Jackson and in one or more other newspapers or financial journals as may be directed by the State Bond Commission.

"SECTION 9. Upon the issuance and sale of such bonds, the State Bond Commission shall transfer the proceeds of any such sale or sales to the special fund in the State Treasury known as the 'Correctional Facilities Construction Fund.' The proceeds of such bonds shall be used solely for the payment of the cost of the project or combined projects described in Section 4 of this act, which shall include costs incident to the issuance and sale of such bonds, and shall be disbursed solely (as provided in Section 17 of this act) under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds, except that the fees and costs incident to the issuance and sale of such bonds shall be disbursed by warrant upon requisition of the State Bond Commission, signed by the Governor.

"SECTION 10. Any holder of bonds issued under the provisions of this act or of any of the interest coupons pertaining thereto may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights granted hereunder, or under such resolution, and may enforce and compel performance of all duties required by this act to be performed, in order to provide for the payment of bonds and interest thereon.

"SECTION 11. Such general obligation bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified or required by this act. Any resolution providing for the issuance of general obligation bonds under the provisions of this act shall become effective immediately upon its adoption by the State Bond Commission, and any such resolution may be adopted at any regular, special or adjourned meeting of the State Bond Commission by a majority of its members.

"The bonds authorized under the authority of this act may, in the discretion of the State Bond Commission, be validated in the Chancery Court of Hinds County, Mississippi, in the manner and with the force and effect provided now or hereafter by

Chapter 13, Title 31, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds. The necessary papers for such validation proceedings shall be transmitted to the State Bond Commission, and the required notice shall be published in a newspaper published in the City of Jackson, Mississippi.

"SECTION 12. All bonds issued under the provisions of this act shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

"SECTION 13. This act shall be deemed to be full and complete authority for the exercise of the powers herein granted, but this act shall not be deemed to repeal or to be in derogation of any existing law of this state whereunder projects of the character herein defined may be constructed or financed.

"SECTION 14. The funds which are transferred from the sale of bonds under this act to the special fund in the State Treasury known as the 'Correctional Facilities Construction Fund' may be withdrawn only in the manner provided in Section 17 of this act; provided, however, that warrants for the payment of costs incident to the issuance and sale of bonds shall be issued upon requisition by the State Bond Commission, signed by the Governor. The office shall submit a full report of its work and all the transactions carried on by it, and a complete statement of all its expenditures at the next regular session of the Legislature.

"SECTION 15. The Attorney General of the State of Mississippi shall represent the State Bond Commission in issuing, selling and validating bonds herein provided for, and the State Bond Commission is hereby authorized and empowered to expend such sums as may be necessary and appropriate from the proceeds derived from the sale of the bonds authorized hereunder to pay for the cost of approving attorney's fees, validating, printing and cost of delivery of bonds authorized under this act.

"SECTION 16. Pending the issuance of bonds of the state as authorized under this act, when funds are insufficient to cover expenditures for construction, equipping, improvement and renovation authorized in Section 4 of this act, the State Bond Commission, upon receipt of a resolution from the Executive Director of the Office of General Services, approved by the State Fiscal Management Board, declaring the necessity for the borrowing of money to cover such expenditures, is authorized and empowered to borrow funds from banks located in the State of Mississippi, or from special funds in the State Treasury, by the issuance of notes, which shall include other certificates of indebtedness, of the State of Mississippi in an amount sufficient to cover such expenditures; however, the principal amount of such notes shall not exceed Five Million Dollars ($5,000,000.00) in the aggregate. Such notes shall mature not longer than ten (10) years from the date issued and shall not bear a greater overall maximum interest rate to maturity than that allowed for general obligation bonds under Section 75-17-101, Mississippi Code of 1972. The State Bond Commission shall pay all expenses, premiums and commissions which may be necessary or advantageous in connection with the issuance of such notes, but solely from the proceeds of such notes, by warrant issued upon requisition of the State Bond Commission signed by the Governor. The proceeds of such notes shall be deposited in the Correctional Facilities Construction Fund and disbursed therefrom as provided in Section 17 of this act. Payment of the principal of and interest on the notes shall be made from any revenues made available therefor by the Legislature and shall be secured additionally by the full faith and credit of the State of Mississippi."

JUDICIAL DECISIONS

1. In general.
2. Sovereign immunity.

1. In general.

There is a constitutional requirement for state defendants, in a suit by prison inmates for certain prison reforms, to establish certain timetables for and proceed to implement (a) adequate medical facilities and services, and (b) the reduction of overcrowding of prison inmates at residential camps as well as the elimination of those residential camps unfit for human habitation. Gates v. Collier, 390 F. Supp. 482 (N.D. Miss. 1975), aff'd, 525 F.2d 965 (5th Cir. 1976).

An opinion in a class action brought by inmates of the state penitentiary against the superintendent of the penitentiary, members of the Mississippi Penitentiary Board, and the governor (joined in by the United States as plaintiff intervenor) describes in some detail the undesirable and unconstitutional conditions existing at the penitentiary. The trial court granted both prohibitory and affirmative relief to ensure compliance with the court's orders. Gates v. Collier, 349 F. Supp. 881 (N.D. Miss. 1972), aff'd, 489 F.2d 298 (5th Cir. 1973), aff'd, 501 F.2d 1291 (5th Cir. 1974), supplemented, 423 F. Supp. 732 (N.D. Miss. 1976), aff'd and remanded, 548 F.2d 1241 (5th Cir. 1977).

2. Sovereign immunity.

Mississippi Department of Corrections (MDOC) was considered an arm of the state for purposes of Eleventh Amendment immunity because state statute, Miss. Code Ann. § 47-5-1 et. seq., considered the MDOC an arm of the state; additionally, the MDOC was funded by the state. The department was responsible for the confinement of prisoners throughout the state; it apparently had the authority to sue and be sued in its own name, and, finally, it was authorized by Miss. Code Ann. § 47-5-5 to hold and use property. Morgan v. Mississippi, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 74001 (S.D. Miss. Feb. 12, 2008), amended by 2009 U.S. Dist. LEXIS 55347 (S.D. Miss. June 16, 2009).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 4, 5, 7.

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 10.

§ 47-5-6. Oversight Task Force established; composition; powers and duties.

(1) There is hereby established a committee to be known as the Corrections and Criminal Justice Oversight Task Force, hereinafter called the Oversight Task Force, which must exercise the powers and fulfill the duties described in this chapter.

(2) The Oversight Task Force shall be composed of the following members:

(a) The Lieutenant Governor shall appoint two (2) members;

(b) The Speaker of the House of Representatives shall appoint two (2) members;

(c) The Commissioner of the Department of Corrections, or his designee;

(d) The Chief Justice of the Mississippi Supreme Court shall appoint one (1) member of the circuit court;

(e) The Governor shall appoint one (1) member from the Parole Board;

(f) The Director of the Joint Legislative Committee on Performance Evaluation and Expenditure Review, or his designee;

(g) The Attorney General shall appoint one (1) member representing the victims' community;

(h) The Mississippi Association of Supervisors shall appoint one (1) person to represent the association;

(i) The President of the Mississippi Prosecutors' Association;

(j) The President of the Mississippi Sheriffs' Association, or his designee; and

(k) The Office of the State Public Defender shall appoint one (1) person to represent the public defender's office.

(3) The task force shall meet on or before July 15, 2015, at the call of the Commissioner of the Department of Corrections and organize itself by electing one (1) of its members as chair and such other officers as the task force may consider necessary. Thereafter, the task force shall meet at least biannually and at the call of the chair or by a majority of the members. A quorum consists of seven (7) members.

(4) The task force shall have the following powers and duties:

(a) Track and assess outcomes from the recommendations in the Corrections and Criminal Justice Task Force report of December 2013;

(b) Prepare and submit an annual report no later than the first day of the second full week of each regular session of the Legislature on the outcome and performance measures to the Legislature, Governor and Chief Justice. The report shall include recommendations for improvements, recommendations on transfers of funding based on the success or failure of implementation of the recommendations, and a summary of savings. The report may also present additional recommendations to the Legislature on future legislation and policy options to enhance public safety and control corrections costs;

(c) Monitor compliance with sentencing standards, assess their impact on the correctional resources of the state and determine if the standards advance the adopted sentencing policy goals of the state;

(d) Review the classifications of crimes and sentences and make recommendations for change when supported by information that change is advisable to further the adopted sentencing policy goals of the state;

(e) Develop a research and analysis system to determine the feasibility, impact on resources, and budget consequences of any proposed or existing legislation affecting sentence length;

(f) Request, review, and receive data and reports on performance outcome measures as related to Chapter 457, Laws of 2014;

(g) To undertake such additional studies or evaluations as the Oversight Task Force considers necessary to provide sentencing reform information and analysis;

(h) Prepare and conduct annual continuing legal education seminars regarding the sentencing guidelines to be presented to judges, prosecuting attorneys and their deputies, and public defenders and their deputies, as so required;

(i) The Oversight Task Force shall use clerical and professional employees of the Department of Corrections for its staff;

(j) The Oversight Task Force may employ or retain other professional staff, upon the determination of the necessity for other staff;

(k) The Oversight Task Force may employ consultants to assist in the evaluations and, when necessary, the implementation of the recommendations of the Corrections and Criminal Justice Task Force report of December 2013;

(*l*) The Oversight Task Force is encouraged to apply for and may expend grants, gifts, or federal funds it receives from other sources to carry out its duties and responsibilities.

SOURCES: Laws, 2014, ch. 457, § 68, effective from and after July 1, 2014.

Editor's Note — Former § 47-5-6 related to the establishment of a correctional facility for first offenders.

A former § 47-5-6 [Laws, 1975, ch. 482; Repealed by Laws, 1976, ch. 440, § 92, eff from and after July 1, 1976] related to the establishment of a correctional facility for first offenders.

§ 47-5-7. Seal.

The department shall procure a United States lock-seal, to be styled "Mississippi Department of Corrections" of which the commissioner shall be the custodian. Such seal shall be used to authenticate all the written official acts, orders and process executed and issued from the department, and especially on all orders dispatched to the county jails for offenders who have been sentenced to the custody of the department.

SOURCES: Codes, 1942, § 7973; Laws, 1964, ch. 378, § 53; Laws, 1976, ch. 440, § 21; reenacted, Laws, 1981, ch. 465, § 5; reenacted, Laws, 1984, ch. 471, § 5; reenacted, Laws, 1986, ch. 413, § 5; Laws, 1988, ch. 504, § 4, eff from and after passage (approved May 6, 1988).

§ 47-5-8. Department of Corrections; creation; divisions; succession to interests of State Penitentiary and State Probation and Parole Board.

(1) There is created the Mississippi Department of Corrections, which shall be under the policy direction of the Governor. The chief administrative officer of the department shall be the Commissioner of Corrections.

(2)(a) There shall be a Division of Administration and Finance within the department, which shall have as its chief administrative officer a Deputy Commissioner for Administration and Finance who shall be appointed by the commissioner, and shall be directly responsible to the commissioner.

(b) There shall be a Division of Community Corrections within the department, which shall have as its chief administrative officer a Deputy Commissioner for Community Corrections, who shall be appointed by the commissioner, and shall be directly responsible to the commissioner. The Probation and Parole Board shall continue to exercise the authority as provided by law, but after July 1, 1976, the Division of Community

Corrections shall serve as the administrative agency for the Probation and Parole Board.

(3) The department shall succeed to the exclusive control of all records, books, papers, equipment and supplies, and all lands, buildings and other real and personal property now or hereafter belonging to or assigned to the use and benefit or under the control of the Mississippi State Penitentiary and the Mississippi Probation and Parole Board, except the records of parole process and revocation and legal matters related thereto, and shall have the exercise and control of the use, distribution and disbursement of all funds, appropriations and taxes now or hereafter in possession, levied, collected or received or appropriated for the use, benefit, support and maintenance of these two (2) agencies except as otherwise provided by law, and the department shall have general supervision of all the affairs of the two (2) agencies herein named except as otherwise provided by law, and the care and conduct of all buildings and grounds, business methods and arrangements of accounts and records, the organization of the administrative plans of each institution, and all other matters incident to the proper functioning of the two (2) agencies.

(4) The commissioner may lease the lands for oil, gas, mineral exploration and other purposes, and contract with other state agencies for the proper management of lands under such leases or for the provision of other services, and the proceeds thereof shall be paid into the General Fund of the state.

SOURCES: Laws, 1976, ch. 440, §§ 10, 11; reenacted, Laws, 1981, ch. 465, § 6; reenacted, Laws, 1984, ch. 471, § 6; Laws, 1984, ch. 488, § 216; reenacted, Laws, 1986, ch. 413, § 6; Laws, 1988, ch. 504, § 5; Laws, 2002, ch. 624, § 2, eff from and after July 1, 2002.

Cross References — Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Supervision by staff personnel of division of community services of offenders granted probation, parole or executive clemency, see § 47-7-5.

Duties of field supervisors and presentence investigators within division of community services, see § 47-7-9.

JUDICIAL DECISIONS

1. In general.

The Department of Corrections has no duty to provide the Parole Board with information and has no control over parole decisions. Thus, the department had no duty to a victim assaulted by a paroled prisoner. Grantham v. Mississippi Dep't of Cors., 522 So. 2d 219 (Miss. 1988).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 4, 5, 7.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 2 et seq.

§ 47-5-9. Repealed.

Repealed by Laws, 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1964, ch. 378, § 60]

Editor's Note — Former § 47-5-9 required the Legislature at each session to appropriate funds for the yearly maintenance of the penitentiary and prisoners.

§ 47-5-10. Department of Corrections; general powers and duties.

The department shall have the following powers and duties:

(a) To accept adult offenders committed to it by the courts of this state for incarceration, care, custody, treatment and rehabilitation;

(b) To provide for the care, custody, study, training, supervision and treatment of adult offenders committed to the department;

(c) To maintain, administer and exercise executive and administrative supervision over all state correctional institutions and facilities used for the custody, training, care, treatment and after-care supervision of adult offenders committed to the department; provided, however, that such supervision shall not extend to any institution or facility for which executive and administrative supervision has been provided by law through another agency;

(d) To plan, develop and coordinate a statewide, comprehensive correctional program designed to train and rehabilitate offenders in order to prevent, control and retard recidivism;

(e) To maintain records of persons committed to it, and to establish programs of research, statistics and planning:

(i) An offender's records shall include a single cover sheet that contains the following information about the offender: name, including any aliases; department inmate number; social security number; photograph; court of conviction; cause number; date of conviction; date of sentence; total number of days in the department's custody or number of days creditable toward time served on each charge; date of actual custody; and date of any revocation of a suspended sentence;

(ii) The department shall maintain an offender's cover sheet in the course of its regularly conducted business activities and shall include an offender's cover sheet in each request from a court, prosecutor or law enforcement agency for a summary of an offender's records with the department, also known as a "pen-pack." The cover sheet shall conform to Rules 803(6) and 803(8) of the Mississippi Rules of Evidence for admission as an exception to the hearsay rule and may be admissible when properly authenticated according to evidentiary rules and when offered for the purpose of enhanced sentencing under Section 41-29-147, 99-19-81 or 99-19-83 or other similar purposes; and

(iii) This subsection is not intended to conflict with an offender's right of confrontation in criminal proceedings under the state or federal constitution;

(f) To investigate the grievances of any person committed to the department, and to inquire into any alleged misconduct by employees; and for this purpose it may issue subpoenas and compel the attendance of witnesses and the production of writings and papers, and may examine under oath any witnesses who may appear before it;

(g) To administer programs of training and development of personnel of the department;

(h) To develop and implement diversified programs and facilities to promote, enhance, provide and assure the opportunities for the successful custody, training and treatment of adult offenders properly committed to the department or confined in any facility under its control. Such programs and facilities may include, but not be limited to, institutions, group homes, halfway houses, diagnostic centers, work and educational release centers, technical violation centers, restitution centers, counseling and supervision of probation, parole, suspension and compact cases, presentence investigating and other state and local community-based programs and facilities;

(i) To receive, hold and use, as a corporate body, any real, personal and mixed property donated to the department, and any other corporate authority as shall be necessary for the operation of any facility at present or hereafter;

(j) To provide those personnel, facilities, programs and services the department shall find necessary in the operation of a modern correctional system for the custody, care, study and treatment of adult offenders placed under its jurisdiction by the courts and other agencies in accordance with law;

(k) To develop the capacity and administrative network necessary to deliver advisory consultation and technical assistance to units of local government for the purpose of assisting them in developing model local correctional programs for adult offenders;

(*l*) To cooperate with other departments and agencies and with local communities for the development of standards and programs for better correctional services in this state;

(m) To administer all monies and properties of the department;

(n) To report annually to the Legislature and the Governor on the committed persons, institutions and programs of the department;

(o) To cooperate with the courts and with public and private agencies and officials to assist in attaining the purposes of this chapter and Chapter 7 of this title. The department may enter into agreements and contracts with other departments of federal, state or local government and with private agencies concerning the discharge of its responsibilities or theirs. The department shall have the authority to accept and expend or use gifts, grants and subsidies from public and private sources;

(p) To make all rules and regulations and exercise all powers and duties vested by law in the department;

(q) The department may require a search of all persons entering the grounds and facilities at the correctional system;

(r) To submit, in a timely manner, to the Oversight Task Force established in Section 47-5-6 any reports required by law or regulation or requested by the task force.

(s) To discharge any other power or duty imposed or established by law.

SOURCES: Laws, 1976, ch. 440, § 12; reenacted, Laws, 1981, ch. 465, § 7; reenacted, Laws, 1984, ch. 471, § 7; Laws, 1984, ch. 488, § 217; reenacted, Laws, 1986, ch. 413, § 7; Laws, 2012, ch. 305, § 1; Laws, 2014, ch. 457, § 62, eff from and after July 1, 2014.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws of 2013, ch. 524, § 1 provides:

"SECTION 1. (1) There is hereby created the Corrections and Criminal Justice Task Force to undertake a comprehensive review of the state's corrections system and criminal justice system. The task force shall be comprised of twenty-one (21) members, as follows:

"(a) The Chairpersons of the Corrections Committees of the Senate and the House of Representatives or their designees;

"(b) The Chairpersons of the Judiciary 'B' Committees of the Senate and the House of Representatives or their designees;

"(c) The Lieutenant Governor or a designee;

"(d) The Speaker of the House of Representatives or a designee;

"(e) The Commissioner of Corrections or a designee;

"(f) The Attorney General or a designee;

"(g) A state Supreme Court justice or Court of Appeals judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(h) A state circuit court judge who presides over a certified drug court, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(i) A state justice court judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(j) A state county court judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(k) A county public defender, appointed by the Governor;

"(*l*) The Director of the Capital Defense Counsel within the Office of the State Public Defender or a designee;

"(m) A member of the Mississippi Sheriffs' Association appointed by its executive director;

"(n) A district attorney or an assistant district attorney, appointed by the Attorney General;

"(o) A member of the Mississippi Association of Supervisors, chosen by the Executive Director of the Mississippi Association of Supervisors;

"(p) A member representing the Southern Poverty Law Center appointed by the Managing Attorney for Mississippi;

"(q) A member of the Mississippi Association for Justice appointed by its executive committee president;

"(r) A member of the Mississippi Association of Chiefs of Police appointed by its executive board president; and

"(s) The President of the Mississippi Prosecutors Association or a designee.

"(2) The appointed members of the task force must be appointed within thirty (30) days of the effective date of this act. The members shall be a part of the task force for the life of the task force. Any vacancy in the task force shall not affect its powers, but shall be filled in the same manner prescribed above. The task force shall hold its first meeting within sixty (60) days of the effective date of this act, on the call of the

Commissioner of Corrections. At the first meeting, the task force shall elect from among its membership a permanent chairperson and any other officers, if any, determined to be necessary. A majority of the membership of the task force shall constitute a quorum, and shall meet at the call of the chairperson, or upon an affirmative vote of a majority of the task force. All members must be notified in writing of all meetings at least five (5) days before the date on which a meeting of the task force is scheduled.

"(3) The task force shall study and make recommendations for improving the relationship between the corrections system and the criminal justice system in Mississippi. In making those recommendations, the task force shall:

"(a) Undertake a comprehensive review of all areas of the state's corrections system, including state, local and tribal governments' corrections practices and policies regarding sentencing guidelines;

"(b) Review the total number of offender populations in Mississippi correctional facilities to determine which offenders receive or serve differing sentences for the same crimes, enumerating any discrepancies in sentencing for conviction of the same crimes and documenting the percentage of offenders whose sentence was a result of mandatory minimum sentencing;

"(c) Make findings regarding such review and recommendations for changes in oversight, policies, practices and laws designed to prevent, deter and reduce crime and violence, reduce recidivism, improve cost-effectiveness and ensure the interests of justice at every step of the criminal justice system;

"(d) Identify critical problems in the criminal justice system and assess the cost-effectiveness of the use of state and local funds in the criminal justice system;

"(e) Consult with state, local and tribal government and nongovernmental leaders, including law enforcement officials, legislators, judges, court administrators, prosecutors, defense counsel, probation and parole officials, criminal justice planners, criminologists, civil rights and liberties organizations, formerly incarcerated individuals and corrections officials; and

"(f) Conduct a comprehensive review of the drug court programs, intensive supervision programs and any other alternative incarceration programs utilized in the state and provide detailed recommendations regarding the appropriate funding to support those programs.

"The Mississippi Department of Corrections shall provide appropriate staff support to assist the task force in carrying out its duties. The Commissioner of Corrections shall designate an appropriate employee to act as a point of contact for the provision of staff support to the task force. In addition, the task force may consult with employees of any state agency or department necessary to accomplish the task force's responsibilities under this section.

"(4) The task force shall prepare and submit a final report that contains a detailed statement of findings, conclusions and recommendations of the task force to the Legislature, the Governor and to local and tribal governments by December 31, 2013. It is the intention of the Legislature that, given the importance of the matters before the task force, the task force should work toward unanimously supported findings and recommendations and the task force shall state the vote total for each recommendation contained in its report to the Legislature. The report submitted under this subsection shall be made available to the public.

"The recommendations for improving the relationship between the corrections system and the criminal justice system in Mississippi may include proposals for specific statutory changes for improving the effectiveness of the criminal justice system and methods to foster cooperation among state agencies and between the state and local governments. The task force shall be abolished upon submission of the report to the Governor and the Legislature."

Laws of 2015, ch. 474, § 1, effective April 22, 2015, provides:

"SECTION 1. (1) The Mississippi Department of Finance and Administration is authorized to convey and transfer without compensation all of the rights, title and interest in certain state-owned real property and improvements located at 421 West Pascagoula Street in the City of Jackson, Hinds County, Mississippi, to the Mississippi Department of Corrections, subject to the requirements of Section 29-1-1(1)."

"(2) The state-owned real property to be conveyed and transferred under the provisions of this act is the same as was acquired by the State of Mississippi for the use and benefit of" the Department of Finance and Administration as authorized under Section 16 of Chapter 87, Laws of 2003, Section 27-104-107, and as authorized by resolution of the State Bond Commission on June 21, 2004, resolution of the Department of Finance and Administration on June 18, 2004, and Resolution of the Mississippi Public Procurement Board at a special meeting on June 15, 2004. The real property herein described lying and being situated in the City of Jackson, Hinds County, Mississippi, and recorded in Deed Book 6071 at Page 430 in the Chancery Clerk's Office of Hinds County, Mississippi, is more particularly described as:

"Tract 1

"A certain parcel of land lying and being situated in Lot 28, Miscellaneous Lots in West Jackson of H.C. Daniels Map of 1875 and being more particularly described as follows:

"Commencing at the intersection of the South line of Pascagoula Street with the West right-of-way of Gallatin Street; thence run Southerly along the said West right-of-way line for 46.2 feet being the Point of Beginning; run thence Southerly along said right-of-way of Gallatin Street for 96.4 feet; thence turn right 90° 11′ and run Westerly for 342.96 feet; thence turn right 89° 48′ and run Northerly 94.5 feet; thence turn right 89° 43′ and run Easterly 342.2 feet to the Point of Beginning; being all of said Lot 28 except formerly given for right-of-way widening of Gallatin Street.

"TRACT 2

"A certain lot or parcel of land in Lot 27 of H.C. Daniels Map of 1875 of the City of Jackson, Mississippi, and more particularly described by metes and bounds as follows, to-wit: .

"Beginning at a point on the West line of Gallatin Street and South Line of Pascagoula Street, thence run South for 46.2 feet; thence West 342.2 feet; thence North 45.5 feet; thence East 342.2 feet to the Point of Beginning which is a part of Lot 27 Miscellaneous Numbers of West Jackson. LESS AND EXCEPT:

"Begin at a point that is 305.4 feet West of the West right-of-way of Gallatin Street and the South right-of-way of Pascagoula Street as now laid out and presently in use, thence run South for 45.57 feet; thence West for 36.5 feet; thence run North for 45.5 feet; thence run East for 36.5 feet to the Point of Beginning, said parcel containing 0.038 acres more or less and being a part of Lot 27 Miscellaneous Numbers of West Jackson, Hinds County, Mississippi.

"AND, LESS AND EXCEPT:

"The following described land and property being situated in the Southwest Quarter (SW ¼) of Section 3, Township 5 North Range 1 East, Hinds County, Mississippi, and being part of Miscellaneous Lot 27, West Jackson, According to the Daniels Map of 1875 to wit:

"Beginning at the Northeast Corner of the property described in Deed Book 3486 at Page 518, said corner being the intersection of the West right-of-way line of Gallatin Street and the South right-of-way line of Pascagoula Street; thence run Southward along the West right-of-way line of Gallatin Street for 32 feet; thence run Northwesterly for 41 feet to a point on the South right-of-way line of Pascagoula Street; thence run Easterly along the South right-of-way line of Pascagoula Street for 25 feet back to the Point of Beginning, said parcel containing 400 square feet more or less."

Amendment Notes — The 2014 amendment inserted "technical violation centers," in the middle of the last sentence in (h); added (r) and redesignated remaining subsection accordingly; and made minor punctuation changes.

Cross References — Provisions relative to prison system overcrowding and the exercise of powers which tend to reduce prison system population or expand operating capacity during states of emergency, see §§ 47-5-701 et seq.

Administration of community service restitution program by department of corrections, see §§ 99-20-1 et seq.

Technical violation centers, see § 47-7-38.1.

JUDICIAL DECISIONS

1. In general.

The Department of Corrections has no duty to provide the Parole Board with information and has no control over parole decisions. Thus, the department had no duty to a victim assaulted by a paroled prisoner. Grantham v. Mississippi Dep't of Cors., 522 So. 2d 219 (Miss. 1988).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 4, 5, 7.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 2 et seq.

§ 47-5-11. Department to collect certain prison, probation and post-release supervision data; report to Oversight Task Force.

(1) The Mississippi Department of Corrections shall collect the following information:

(a) Prison data shall include:

(i) The number of offenders entering prison on a new offense;

(ii) The number of offenders entering prison as a revocation of supervision;

(iii) The average sentence length for new prison sentences by offense type;

(iv) The average sentence length for offenders entering prison for a probation revocation;

(v) The average sentence length for offenders entering prison for a parole revocation;

(vi) The average percentage of prison sentence served in prison by offense type;

(vii) The average length of stay by offense type;

(viii) Recidivism rates. For the purposes of this report, "recidivism" means conviction of a new felony offense within three (3) years of release from prison;

1. Recidivism rates by offense type;
2. Recidivism rates by risk level;

(ix) Total prison population;

1. By offense type;
2. By type of admission into prison.

(b) Probation data shall include:

(i) The number of offenders supervised on probation;

(ii) The number of offenders placed on probation;

(iii) The number of probationers revoked for a technical violation and sentenced to a term of imprisonment in a technical violation center;

(iv) The number of probationers revoked for a technical violation and sentenced to a term of imprisonment in another type of department of correction;

(v) The number of probationers who are convicted of a new felony offense and sentenced to a term of imprisonment;

(vi) The number of probationers held on a violation in a county jail awaiting a revocation hearing; and

(vii) The average length of stay in a county jail for probationers awaiting a revocation hearing.

(c) Post-release supervision data shall include:

(i) The number of offenders supervised on post-release supervision;

(ii) The number of offenders placed on post-release supervision;

(iii) The number of post-release probationers revoked for a technical violation and sentenced to a term of imprisonment in a technical violation center;

(iv) The number of post-release probationers revoked for a technical violation and sentenced to a term of imprisonment in another type of department of correction facility;

(v) The number of post-release probationers who are convicted of a new felony offense and sentenced to a term of imprisonment;

(vi) The number of post-release probationers held on a violation in a county jail awaiting a revocation hearing; and

(vii) The average length of stay in a county jail for post-release probationers awaiting a revocation hearing.

(2) The Department of Corrections shall semiannually report information required in subsection (1) of this section to the Oversight Task Force, and upon request, shall report the information to the PEER Committee.

SOURCES: Laws, 2014, ch. 457, § 66, effective from and after July 1, 2014.

Editor's Note — A former § 47-5-11 related to the appointment, terms of office and qualifications of members of the Mississippi Penitentiary Board.

A former § 47-5-11. (Laws, 1964, ch. 378, § 4; Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976).

Cross References — Oversight Task Force, see § 47-5-6.

§ 47-5-12. Repealed.

Repealed by Laws of 1988, ch. 504, § 60, eff from and after May 6, 1988.

[Laws, 1976, ch. 440, § 4; reenacted, Laws, 1981, ch. 465, § 8; Am Laws, 1983, ch. 351; reenacted, Laws, 1984, ch. 471, § 8; Laws, 1986, ch. 413, § 8]

Editor's Note — Former § 47-5-12 created the board of corrections.

Laws of 1988, ch. 504, § 1, provides as follows:

"SECTION 1. The Mississippi Board of Corrections is hereby abolished and all power, authority, duties and functions of such board shall hereafter vest in and be performed by the Mississippi Department of Corrections. The terms 'Mississippi Board of Corrections,' 'Board of Corrections' and 'board' appearing in the laws in connection with the performance of the board's functions transferred to the Mississippi Department of

Corrections shall be the Department of Corrections, and more particularly such words or terms shall mean the Mississippi Department of Corrections whenever they appear."

§ 47-5-13. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976.

[Laws, 1964, ch. 378, § 5; Laws, 1971, ch. 524, § 2; Laws, 1974, ch. 539, § 1; Laws, 1975, ch. 401]

Editor's Note — Former § 47-5-13 related to the compensation and bond of members of The Mississippi Penitentiary Board.

§ 47-5-14. Repealed.

Repealed by Laws of 1988, ch. 504, § 60, eff from and after May 6, 1988.

[Laws, 1976, ch. 440, § 5; Laws, 1980, ch. 560, § 20; reenacted, Laws, 1981, ch. 465, § 9; reenacted and amended, Laws, 1984, ch. 471, § 9; reenacted, Laws, 1986, ch. 413, § 9]

Editor's Note — Former § 47-5-14 provided compensation for the Mississippi Board of Corrections.

§ 47-5-15. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976.

[Laws, 1964, ch. 378, § 6]

Editor's Note — Former § 47-5-15 related to meetings of the penitentiary board.

§ 47-5-16. Repealed.

Repealed by Laws of 1988, ch. 504, § 60, eff from and after May 6, 1988.

[Laws, 1976, ch. 440, § 6; reenacted, Laws, 1981, ch. 465, § 10; reenacted, Laws, 1984, ch. 471, § 10; Laws, 1986, ch. 413, § 10]

Editor's Note — Former § 47-5-16 related to meetings of the Board of Corrections.

§ 47-5-17. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976.

[Laws, 1964, ch. 378, § 7]

Editor's Note — Former § 47-5-17 related to the organization of the penitentiary board, board officers, and clerical assistance for the board.

§§ 47-5-18 and 47-5-19. Repealed.

Repealed by Laws of 1988, ch. 504, § 60, eff from and after May 6, 1988.

§ 47-5-18. [Laws, 1976, ch. 440, § 7; reenacted, Laws, 1981, ch. 465, § 11; reenacted, Laws, 1984, ch. 471, § 11; Laws, 1986, ch. 413, § 11]

§ 47-5-19. [Codes, 1942, § 7951; Laws, 1964, ch. 378, § 31; Laws, 1976, ch. 440, § 8; reenacted, Laws, 1981, ch. 465, § 12; reenacted, Laws, 1984, ch. 471, § 12; Laws, 1986, ch. 413, § 12]

Editor's Note — Former § 47-5-18 related to the organization of the Board of Corrections, board officers, and clerical assistance for the board.

Former § 47-5-19 provided for the transfer of the powers and duties of the penitentiary board to the board of corrections.

§ 47-5-20. Powers and duties of commissioner.

The commissioner shall have the following powers and duties:

(a) To establish the general policy of the department;

(b) To approve proposals for the location of new facilities, for major renovation activities, and for the creation of new programs and divisions within the department as well as for the abolition of the same; provided, however, that the commissioner shall approve the location of no new facility unless the board of supervisors of the county or the governing authorities of the municipality in which the new facility is to be located shall have had the opportunity with at least sixty (60) days' prior notice to disapprove the location of the proposed facility. If either the board of supervisors or the governing authorities shall disapprove the facility, it shall not be located in that county or municipality. Said notice shall be made by certified mail, return receipt requested, to the members of the board or governing authorities and to the clerk thereof;

(c) Except as otherwise provided or required by law, to open bids and approve the sale of any products or manufactured goods by the department according to applicable provisions of law regarding bidding and sale of state property, and according to rules and regulations established by the State Fiscal Management Board; and

(d) To adopt administrative rules and regulations including, but not limited to, offender transfer procedures, award of administrative earned time, personnel procedures, employment practices.

SOURCES: Laws, 1976, ch. 440, § 9; Laws, 1977, ch. 479, § 1; reenacted, Laws, 1981, ch. 465, § 13; reenacted, Laws, 1984, ch. 471, § 13; Laws, 1984, ch. 488, § 218; reenacted, Laws, 1986, ch. 413, § 13; Laws, 1988, ch. 504, § 6, eff from and after passage (approved May 6, 1988).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws of 1986, ch. 491, § 1, eff from and after passage (approved April 15, 1986), provides as follows:

"SECTION 1. The Mississippi Board of Corrections is hereby authorized to convey the right-of-way on the grounds of the Mississippi State Penitentiary, as is hereinafter described, exclusive of gas, water, mineral and subsurface rights, to Sunflower County, Mississippi, for the purpose of completing the Federal Aid Public Road Project No. RS-2847(2)B- Lombardy Road. Said specific right-of-way is described as follows:

"4.794 acres, more or less, located in Section 15, Township 24 North, Range 4 West, Sunflower County, Mississippi, and more particularly described as follows:

"Begin at a point on the centerline of the Lombardy Road at Station 512+89.14, with said point being the Southwest corner of Section 15; thence North 00 degrees 33′36″ East 410.86 feet to Station 517+ 00 along the said centerline; thence around a 00 degrees 24′30″ curve to the left a distance 399.97 feet to Station 520+ 99.97 along the said centerline; thence around a 00 degrees 24′30″ curve to the right a distance 399.97 feet to Station 524+99.94 along the said centerline; thence North 00 degrees 33′36″ East 2,672.71 feet to Station 551+72.65 along the said centerline; thence around a 00 degrees 30′00″ curve to the left at a distance 248.67 feet to Station 554+21.32 along the said centerline; thence North 00 degrees 41′00″ West 578.68 feet to Station 560+ 00 along the said centerline; thence West 10 feet to Station 560+00 thence North 00 degrees 41′00″ West 100 feet to Station 561+ 00; thence East 10 feet to Station 561+00, thence North 00 degrees 41′00″ West 410 feet to Station 565+10 along the said centerline; thence West 80 feet to Station 565+10; thence South 00 degrees 41'00" East 1,688.68 feet to Station 554+21.32; thence around a 00 degrees 30′00″ curve to the right a distance 248.67 feet to Station 551+72.65; thence South 00 degrees 33′36″ West 2,672.71 feet to Station 524+99.94; thence around a 00 degrees 24′30″ curve to the left a distance 399.97 feet to Station 520+99.97; thence around a 00 degrees 24′30″ curve to the right at a distance 399.97 feet to Station 517+00.00; thence South 00 degrees 33′36″ West 410.86 feet to Station 512+89.14; thence West 40.00 feet to Station 512+89.14 to the said centerline and the Point of Beginning.

"Less and Except: 2.996 acres, more or less, existing road right-of-way.

"The Attorney General shall assist in the preparation of legal documents necessary to transfer said right-of-way under the terms specified herein."

Cross References — Provisions providing that the state fiscal management board, acting through the bureau of budget and fiscal management, shall be the department of public accounts formerly in the office of the state auditor of public accounts, see §§ 7-7-2 et seq.

State fiscal management board, see §§ 27-104-1 et seq.

Further powers and duties of the commissioner, see § 47-5-28.

Agreements to transfer state offenders to federal facilities, see § 47-5-175.

Powers of board relating to penitentiary-made goods program, see §§ 47-5-301 et seq.

State board of corrections recommending rules and regulations concerning participation of state inmates in public service work programs, see § 47-5-401.

State board's approval required of rules governing participation of state inmates in joint state-county public service work programs, see § 47-5-405.

Authority of state board of corrections to delegate functions relative to joint state-county public service work programs, see § 47-5-419.

Provisions relative to prison system overcrowding and the exercise of powers which tend to reduce prison system population or expand operating capacity during states of emergency, see §§ 47-5-701 et seq.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 4, 5, 7.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 2 et seq.

§ 47-5-21. Repealed.

Repealed by Laws of 1988, ch. 504, § 60, eff from and after May 6, 1988.

[Codes, 1942, § 7928; Laws, 1964, ch. 378, § 8; brought forward, Laws, 1981, ch. 465, § 14; reenacted, Laws, 1984, ch. 471, § 14; Laws, 1986, ch. 413, § 14]

Editor's Note — Former § 47-5-21 authorized the removal of members of the board of corrections for cause.

§ 47-5-23. Management and control of correctional system to be vested in Department of Corrections.

The department shall be vested with the exclusive responsibility for management and control of the correctional system, and all properties belonging thereto, subject only to the limitations of this chapter, and shall be responsible for the management of affairs of the correctional system and for the proper care, treatment, feeding, clothing and management of the offenders confined therein. The commissioner shall have final authority to employ and discharge all employees of the correctional system, except as otherwise provided by law.

SOURCES: Codes, 1942, § 7930; Laws, 1964, ch. 378, § 10; Laws, 1974, ch. 539, § 2; Laws, 1976, ch. 440, § 22; reenacted, Laws, 1981, ch. 465, § 15; reenacted, Laws, 1984, ch. 471, § 15; reenacted, Laws, 1986, ch. 413, § 15, eff from and after passage (approved March 28, 1986).

Cross References — Oath of employees of correctional system, see § 47-5-41.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

In damages action brought by former inmate alleging, inter alia, breach of duty imposed by this section and by §§ 47-5-1 and 47-5-45 [repealed], the court's recognition of an immunity defense for the superintendents and the assistant superintendent, raised with regard to a cause of action brought under 42 USCS § 1983, was dispositive of this claim as well; simple negligence in the performance of the superintendents' duties was not sufficient to support their liability for money damages for injuries suffered in prison by the plaintiff. Bogard v. Cook, 405 F. Supp. 1202 (N.D. Miss. 1975), aff'd, 586 F.2d 399 (5th Cir. 1978), reh'g denied, 591 F.2d 102 (5th Cir. 1979), cert. denied, 44 U.S. 883, 100 S. Ct. 173, 62 L. Ed. 2d 113 (1979).

The district court's findings that conditions at the Mississippi State Penitentiary denied inmates proper care, treatment, and feeding as required by statute, and the relief therein ordered, were affirmed. Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974).

There is a constitutional requirement for state defendants, in a suit by prison inmates for certain prison reforms, to establish certain time-tables for and proceed to implement (a) adequate medical facilities and services, and (b) the reduction of overcrowding of prison inmates at residential camps as well as the elimination of those residential camps unfit for human habitation. Gates v. Collier, 390 F. Supp. 482 (N.D. Miss. 1975), aff'd, 525 F.2d 965 (5th Cir. 1976).

Mississippi recognizes that its prisoners must be afforded civilized treatment, imposing on the penitentiary superintendent the general common law duty of the custodian of a prisoner to take proper care of him, and civil rights protestors, who were detained in the Mississippi penitentiary merely for the purpose of holding them for trial, with male prisoners required to strip naked and remain in such state for up to 32 hours and detained in cells with inadequate hygienic facilities and no bedding, and with female prisoners required to strip to their undergarments and permitted to have no personal belongings including medicine or sanitary napkins and given quantities of laxatives, and who brought an action against state and municipal authorities, were subjected to inhuman treatment in violation of this statute. Anderson v. Nosser, 438 F.2d 183 (5th Cir. 1971), modified on other grounds, 456 F.2d 835 (5th Cir. 1972), cert. denied, 409 U.S. 848, 93 S. Ct. 53, 34 L. Ed. 2d 89 (1972).

The superintendent of a state prison farm, vested with exclusive management and control thereof by virtue of Code 1942, § 7930, who inflicted cruel and unusual punishment upon civil rights demonstrators charged with parading without a permit who had not been arraigned or tried for the offense charged, violated 42 USCS § 1983. Anderson v. Nosser, 438 F.2d 183 (5th Cir. 1971), modified on other grounds, 456 F.2d 835 (5th Cir. 1972), cert. denied, 409 U.S. 848, 93 S. Ct. 53, 34 L. Ed. 2d 89 (1972).

2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

The superintendent of the state penitentiary is granted by statute exclusive management and control of the prison system. Morgan v. Cook, 236 So. 2d 749 (Miss. 1970).

RESEARCH REFERENCES

ALR. Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 4, 5, 7, 18.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 6 et seq.

§ 47-5-24. Commissioner of Corrections; appointment; compensation; qualifications; bond.

(1) The Governor shall appoint a Commissioner of Corrections, with the advice and consent of the Senate. Such commissioner may be removed by the Governor. The commissioner shall be the chief executive, administrative and fiscal officer of the department.

(2) The commissioner shall receive an annual salary fixed by the Governor, not to exceed the maximum authorized by law, in addition to all actual, necessary expenses incurred in the discharge of official duties, including mileage as authorized by law.

(3) The commissioner shall possess the following minimum qualifications:

(a) A master's degree in corrections, criminal justice, guidance, social work, or some related field, and at least six (6) years full-time experience in corrections, including at least three (3) years of correctional management experience; or

(b) A bachelor's degree in a field described in subparagraph (a) of this subsection and at least ten (10) years full-time work in corrections, five (5) years of which shall have been in correctional management; or

(c) Shall possess at least a bachelor's degree and relevant experience in fiscal management in the private or public sector.

(4) The commissioner shall be required, upon assuming the duties of his office, to execute a good and sufficient bond payable to the State of Mississippi in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00), conditioned upon an accurate accounting for all monies and property coming into his hands. The commissioner, upon approval by the Governor, may require of other officers, employees and agents of the department a good and sufficient bond in such sum as he may determine, subject to the minimum requirements set forth herein, payable to the State of Mississippi upon like condition. The bonds shall be approved by the Governor and filed with the Secretary of State, and shall be executed by a surety company authorized to do business under the laws of this state. The premium on any such bond shall be paid by the state out of the support and maintenance fund of the department.

SOURCES: Laws, 1976, ch. 440, § 13; Laws, 1978, ch. 520, § 11; reenacted, Laws, 1981, ch. 465, § 16; reenacted, Laws, 1984, ch. 471, § 16; reenacted, Laws, 1986, ch. 413, § 16; Laws, 1988, ch. 504, § 7, eff from and after passage (approved May 6, 1988).

Cross References — Bond of public officers generally, see §§ 25-1-13 et seq.

Bond of auditor for correctional system, see § 47-5-35.

Commissioner as director of nonprofit corporation formed to manage prison industries, see § 47-5-541.

ATTORNEY GENERAL OPINIONS

Section 47-5-24, provides for the appointment of a Commissioner of Corrections by the Governor at any time in the normal course of events. Smith, February 16, 1995, A.G. Op. #95-0067.

No provision in Section 7-1-35 or in Section 47-5-24 provides for an interim appointment of a Commissioner of Corrections. The statutes make no distinction between an interim appointment and a permanent appointment and, in fact, do not contemplate two different types of appointment. Smith, February 16, 1995, A.G. Op. #95-0067.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 18.

63C Am. Jur. 2d, Public Officers and Employees §§ 487, 488.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 13, 15-16, 115.

§ 47-5-25. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976.

[Laws, 1964, ch. 378, § 12; Laws, 1966, ch. 445, § 29; Laws, 1971, ch. 524, § 3; Laws, 1974, ch. 539, § 9]

Editor's Note — Former § 47-5-25 related to the qualifications, compensation and authority of the superintendent of the prison system and to the classification of prisoners.

§ 47-5-26. Commissioner of Corrections; employment of deputy commissioners, administrative assistant for parole matters, and prison superintendents.

(1) The commissioner shall employ the following personnel:

(a) A Deputy Commissioner for Administration and Finance, who shall supervise and implement all fiscal policies and programs within the department, supervise and implement all hiring and personnel matters within the department, supervise the department's personnel director, supervise and implement all purchasing within the department and supervise and implement all data processing activities within the department, and who shall serve as the Chief Executive Officer of the Division of Administration and Finance. He shall possess either:

(i) A master's degree from an accredited four-year college or university in public or business administration, accounting, economics or a directly related field, and four (4) years of experience in work related to the above-described duties, one (1) year of which must have included line or functional supervision; or

(ii) A bachelor's degree from an accredited four-year college or university in public or business administration, accounting, economics or a directly related field, and six (6) years of experience in work related to the above-described duties, one (1) year of which must have included line or functional supervision. Certification by the State of Mississippi as a certified public accountant may be substituted for one (1) year of the required experience.

(b) A Deputy Commissioner for Community Corrections, who shall initiate and administer programs, including, but not limited to, supervision of probationers, parolees and suspensioners, counseling, community-based treatment, interstate compact administration and enforcement, prevention programs, halfway houses and group homes, technical violation centers, restitution centers, presentence investigations, and work and educational releases, and shall serve as the Chief Executive Officer of the Division of Community Services. The Deputy Commissioner for Community Corrections is charged with full and complete cooperation with the State Parole Board and shall make monthly reports to the Chairman of the Parole Board in the form and type required by the chairman, in his discretion, for the proper performance of the probation and parole functions. After a plea or verdict of guilty to a felony is entered against a person and before he is sentenced, the Deputy Commissioner for Community Corrections shall procure from any available source and shall file in the presentence records any information regarding any criminal history of the person such as fingerprints, dates of arrests, complaints, civil and criminal charges, investigative reports of arresting and prosecuting agencies, reports of the National Crime Information Center, the nature and character of each offense, noting all particular circumstances thereof and any similar data about the person. The Deputy Commissioner for Community Corrections shall keep an accurate and complete duplicate record of this file and shall furnish the duplicate to the department. This file shall be placed in and shall constitute a part of the inmate's master file. The Deputy Commissioner for Community Corrections shall furnish this file to the State Parole Board when the file is needed in the course of its official duties. He shall possess either: (i) a master's degree in counseling, corrections psychology, guidance, social work, criminal justice or some related field and at least four (4) years' full-time experience in such field, including at least one (1) year of supervisory experience; or (ii) a bachelor's degree in a field described in subparagraph (i) of this paragraph and at least six (6) years' full-time work in corrections, one (1) year of which shall have been at the supervisory level.

(c) A Deputy Commissioner for Institutions, who shall administer institutions, reception and diagnostic centers, prerelease centers and other facilities and programs provided therein, and shall serve as the Chief Executive Officer of the Division of Institutions. He shall possess either: (i) a master's degree in counseling, criminal justice, psychology, guidance, social work, business or some related field, and at least four (4) years' full-time experience in corrections, including at least one (1) year of correctional management experience; or (ii) a bachelor's degree in a field described in subparagraph (i) of this paragraph and at least six (6) years' full-time work in corrections, four (4) years of which shall have been at the correctional management level.

(2) The commissioner shall employ an administrative assistant for parole matters, who shall be an employee of the department assigned to the State Parole Board and who shall work under the guidance and supervision of the board.

(3) The administrative assistant for parole matters shall receive an annual salary to be established by the Legislature. The salaries of department employees not established by the Legislature shall receive an annual salary established by the State Personnel Board.

(4) The commissioner shall employ a superintendent for the Parchman facility, Central Mississippi Correctional Facility and South Mississippi Correctional Institution of the Department of Corrections. The Superintendent of the Mississippi State Penitentiary shall reside on the grounds of the Parchman facility. Each superintendent shall appoint an officer in charge when he is absent.

Each superintendent shall develop and implement a plan for the prevention and control of an inmate riot and shall file a report with the Chairman of the Senate Corrections Committee and the Chairman of the House Penitentiary Committee on the first day of each regular session of the Legislature regarding the status of the plan.

In order that the grievances and complaints of inmates, employees and visitors at each facility may be heard in a timely and orderly manner, each superintendent shall appoint or designate an employee at the facility to hear grievances and complaints and to report grievances and complaints to the superintendent. Each superintendent shall institute procedures as are necessary to provide confidentiality to those who file grievances and complaints.

SOURCES: Laws, 1976, ch. 440, § 14; Laws, 1978, ch. 520, § 12; reenacted, Laws, 1981, ch. 465, § 17; reenacted and amended, Laws, 1984, ch. 471, § 17; reenacted and amended, Laws, 1986, ch. 413, § 17; Laws, 1988, ch. 504, § 8; Laws, 1989, 1st Ex Sess, ch. 3, § 9; Laws, 1992, ch. 368 § 1; Laws, 1993, ch. 577, § 1; Laws, 1995, ch 419, § 1; Laws, 2002, ch. 624, § 1; Laws, 2014, ch. 457, § 63, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment inserted "technical violation centers," in the first sentence of (1)(b).

Cross References — State Parole Board, see § 47-7-5.

Technical violation centers, see § 47-7-38.1.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 18 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 12.

§ 47-5-27. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976.

[Laws, 1964, ch. 378, § 19; Laws, 1971, ch. 524, § 6; Laws, 1974, ch. 539, § 4; Laws, 1975, ch. 403]

Editor's Note — Former § 47-5-27 related to the surety bond of superintendent and other officers and employees of the prison system.

§ 47-5-28. Additional powers and duties of commissioner.

The commissioner shall have the following powers and duties:

(a) To implement and administer laws and policy relating to corrections and coordinate the efforts of the department with those of the federal government and other state departments and agencies, county governments, municipal governments, and private agencies concerned with providing offender services;

(b) To establish standards, in cooperation with other state agencies having responsibility as provided by law, provide technical assistance, and exercise the requisite supervision as it relates to correctional programs over all state-supported adult correctional facilities and community-based programs;

(c) To promulgate and publish such rules, regulations and policies of the department as are needed for the efficient government and maintenance of all facilities and programs in accord insofar as possible with currently accepted standards of adult offender care and treatment;

(d) To provide the Parole Board with suitable and sufficient office space and support resources and staff necessary to conducting Parole Board business under the guidance of the Chairman of the Parole Board;

(e) To contract for transitional reentry center beds that will be used as noncorrections housing for offenders released from the department on parole, probation or post-release supervision but do not have appropriate housing available upon release. At least one hundred (100) transitional reentry center beds contracted by the department and chosen by the Parole Board shall be available for the parole board to place parolees without appropriate housing;

(f) To make an annual report to the Governor and the Legislature reflecting the activities of the department and make recommendations for improvement of the services to be performed by the department;

(g) To cooperate fully with periodic independent internal investigations of the department and to file the report with the Governor and the Legislature;

(h) To perform such other duties necessary to effectively and efficiently carry out the purposes of the department as may be directed by the Governor.

SOURCES: Laws, 1976, ch. 440, § 15; reenacted, Laws, 1981, ch. 465, § 18; reenacted, Laws, 1984, ch. 471, § 18; reenacted, Laws, 1986, ch. 413, § 18; Laws, 1988, ch. 504, § 9; Laws, 1989, 1st Ex Sess, ch. 3, § 10; Laws, 1995, ch. 416, § 2; Laws, 2014, ch. 457, § 49, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (e) and redesignated the remaining subsections accordingly; and made minor punctuation changes in (c) and (h).

Cross References — Further powers and duties of the commissioner, see § 47-5-20.

Provisions relative to prison system overcrowding and the exercise of powers which tend to reduce prison system population or expand operating capacity during states of emergency, see §§ 47-5-701 et seq.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 18 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 14.

§ 47-5-29. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976.

[Laws, 1964, ch. 378, § 13; Laws, 1971, ch. 524, § 4; Laws, 1974, ch. 539, § 5]

Editor's Note — Former § 47-5-29 related to the removal of the superintendent by the penitentiary board.

§ 47-5-30. Commissioner of Corrections; development of five-year strategic plan for operation of state correctional system.

(1) The Commissioner of Corrections shall develop a strategic plan for its operation of the state correctional system. The strategic plan shall cover a five-year period. The plan shall include, at a minimum, the following:

(a) A clearly defined comprehensive statement of the mission, goals and objectives of the agency;

(b) Performance effectiveness objectives for each facility under the jurisdiction of the department;

(c) A description of the department's internal management system used to evaluate its performance in relation to projected levels;

(d) Detailed plans and strategies for meeting current and future needs and achieving goals and objectives established for the state correctional system;

(e) A detailed analysis of the use of current agency resources in meeting current needs and expected future needs, and additional resources that may be necessary to meet future needs;

(f) An analysis of factors affecting projected prison populations including impact of juveniles on prison populations and how populations are expected to change within the period of the plan;

(g) A plan to remove inmates from county jails.

(2) The department shall revise the plan annually.

(3) Upon completion of the initial plan and each revision, the department shall provide copies to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chairman of the Senate Corrections Committee, the Chairman of the House Penitentiary Committee, the Legislative Budget Office, the Performance Evaluation and Expenditure Review Committee, the Executive Director of the Department of Finance and Administration and the Legislative Reference Bureau.

(4) The commissioner shall develop the strategic plan before September 23, 1994.

SOURCES: Laws, 1994 Ex Sess, ch. 26, § 27; Laws, 2009, ch. 546, § 15, eff from and after passage (approved Apr. 15, 2009.)

§ 47-5-31. Reports by commissioner; inventory.

The commissioner shall monthly make to the Governor and to the State Fiscal Management Board and to the Chairmen of the Corrections Committee of the Senate and Penitentiary Committee of the House of Representatives full and complete reports of the fiscal affairs of such correctional system and of the general conditions with relation thereto. Not more than thirty (30) days after the end of each fiscal year said commissioner shall give a full and complete inventory of all property of every description belonging to the correctional system, and there shall be set opposite each item the book value of same. Such inventory shall further include a statement of the fiscal affairs of such system as of the last day of the fiscal year; and a sufficient number of copies of such inventory and report shall be printed to give general publicity thereto.

SOURCES: Codes, 1942, § 7931; Laws, 1964, ch. 378, § 11; Laws, 1974, ch. 539, § 6; Laws, 1976, ch. 440, § 23; reenacted, Laws, 1981, ch. 465, § 19; reenacted and amended, Laws, 1984, ch. 388; reenacted, Laws, 1984, ch. 471, § 19; reenacted and amended, Laws, 1986, ch. 413, § 19; Laws, 1988, ch. 504, § 10, eff from and after passage (approved May 6, 1988).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

§ 47-5-33. Commissioner authorized to administer oaths, and to summon and examine witnesses.

The commissioner, in the discharge of his duties, is authorized to administer oaths, to summon and examine witnesses, and take such other steps as may be necessary to ascertain the truth of any matter about which he may have the right to inquire.

SOURCES: Codes, 1942, § 7941; Laws, 1964, ch. 378, § 21; Laws, 1976, ch. 440, § 24; reenacted, Laws, 1981, ch. 465, § 20; reenacted, Laws, 1984, ch. 471, § 20; reenacted, Laws, 1986, ch. 413, § 20; Laws, 1988, ch. 504, § 11, eff from and after passage (approved May 6, 1988).

Cross References — Requirement that probationer submit to a chemical analysis test to detect presence of alcohol or controlled substance as condition of probation, see § 47-7-35.

§ 47-5-35. Auditor for correctional system.

The Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) shall appoint an auditor to audit the correctional system, and provide sufficient office facilities in the Jackson office, who shall be a certified public accountant or an experienced accountant, whose duty shall be to audit all accounts of the state correctional system for the purpose of reporting to the Legislative Budget Office. He shall report whether supplies and products bought and sold are handled in accordance with law and when bought on samples and specifications whether they measure up to such samples and specifications when the goods are received. The auditor shall report on the letting of bids and shall make a determination that all bids are advertised and let in accordance with law and shall render a report on same. The auditor shall be responsible to make a periodic inventory on all goods, machinery, livestock, farm produce or any other property of the correctional system and make a report thereon to the Legislative Budget Office on such terms and conditions and as often as required by the committee. The salaries and expenses of such auditor or his employees shall be paid from funds appropriated for support of the Legislature or its committees.

Such auditor shall make, at least, a monthly report to the Legislative Budget Office and the Chairman of the Corrections Committee of the Senate and the Chairman of the Penitentiary Committee in the House of Representatives.

The auditor shall attend all the meetings of the board and shall be notified by the board of all meetings or specially called meetings. The Joint Legislative Committee on Performance Evaluation and Expenditure Review shall provide the auditor with a secretary and such personnel as it deems necessary.

SOURCES: Codes, 1942, § 7952; Laws, 1964, ch. 378, § 32; Laws, 1971, ch. 524, § 7; Laws, 1974, ch. 539 § 7; Laws, 1976, ch. 440, § 25; reenacted, Laws, 1981, ch. 465, § 21; reenacted, Laws, 1984, ch. 471, § 21; Laws, 1984, ch. 488, § 219; reenacted, Laws, 1986, ch. 413, § 21, eff from and after passage (approved March 28, 1986).

Cross References — Bonds of public officers generally, see §§ 25-1-13 et seq.

Joint Legislative Budget Committee and Legislative Budget Office, generally, see §§ 27-103-101 et seq.

Public purchasing practices, see § 31-7-11.

Bidding requirements for public purchases, see § 31-7-13.

Bond of Commissioner of Corrections, see § 47-5-24.

Remission to State Treasurer of funds belonging to correctional system, and payment of bills and accounts of correctional system, see § 47-5-77.

How purchases are to be made, see § 47-5-79.

Prohibition on sale of oil or gasoline, see § 47-5-87.

Entry of bids, bills, and invoices in minutes before award or payment, see § 47-5-105.

Cancellation of contracts upon finding of fact of auditor for the correctional system, see § 47-5-107.

Audit of penitentiary-made goods, see § 47-5-319.

Penalty for offering or receiving kickbacks, see § 97-11-53.

RESEARCH REFERENCES

ALR. Public officer's bond as subject to forfeiture for malfeasance in office. 4 A.L.R.2d 1348.

Differences in character or quality of materials, articles, or work as affecting acceptance of bid for public contract. 27 A.L.R.2d 917.

Right of public authorities to reject all bids for public work or contract. 31 A.L.R.2d 469.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 9.

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 5.

§ 47-5-37. Fiscal comptroller, bookkeepers, and assistants; maintenance of modern accounting system; commissioner to sign warrants.

The commissioner shall employ a qualified fiscal comptroller who shall be a certified public accountant and who shall be charged with the responsibility of maintaining a modern accounting system which shall accurately reflect all fiscal transactions in such manner and in such form as shall be recommended by the State Fiscal Management Board. The commissioner shall employ such qualified bookkeepers and other clerical personnel as required to maintain the accounting system who shall devote their full time to their duties as employees of the correctional system. The fiscal comptroller shall make a monthly report to the Governor and Chairmen of Corrections Committee of the Senate and the Penitentiary Committee of the House of Representatives. The fiscal comptroller shall countersign all checks. The fiscal comptroller shall have sole responsibility for all purchases and the signing of all purchase orders issued by the correctional system. Such fiscal comptroller shall execute a good and sufficient bond payable to the State of Mississippi in the sum of Fifty Thousand Dollars ($50,000.00), conditioned for the satisfactory performance of the duties of his office, and the accurate accounting of any moneys and properties coming into his hands.

The commissioner or his designee shall sign all requisitions for issuance of warrant authorizing any disbursement of any sum or sums on account of the correctional system, and no money shall be paid out on any account of the correctional system except on a requisition for issuance of warrant signed by him or his designee.

SOURCES: Codes, 1942, § 7934; Laws, 1964, ch. 378, § 14; Laws, 1966, ch. 378, § 1; Laws, 1971, ch. 524, § 5; Laws, 1974, ch. 539 § 8; Laws, 1976, ch. 440, § 26; reenacted, Laws, 1981, ch. 465, § 22; reenacted, Laws, 1984, ch. 471, § 22; reenacted, Laws, 1986, ch. 413, § 22; Laws, 1988, ch. 504, § 12, eff from and after passage (approved May 6, 1988).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Cross References — Oath of employees of correctional system, see § 47-5-41.

§ 47-5-39. Fiscal impact notes.

(1) As used in this section, "fiscal note" means the estimated dollar cost to the state for the first year and the annual cost thereafter. The term "ten-year fiscal note" means the estimated dollar cost to the state over the ten-year period following passage or adoption of the subject of the fiscal note.

(2) Whenever legislation is introduced in the Legislature, which would establish a new criminal offense or would amend the sentencing provisions of an existing criminal offense, the Department of Corrections shall provide a fiscal note and a ten-year fiscal note on the proposed legislation upon the request of any member of the Legislature. The fiscal note shall be published in electronic form on the Mississippi Legislature website as provided in Section 5-1-85.

(3) State agencies and political subdivisions shall cooperate with the department in preparing fiscal notes and the ten-year fiscal notes. Such agencies and political subdivisions shall submit requested information to the department in a timely fashion.

(4) In preparing fiscal notes and the ten-year fiscal notes, the department must accurately report to the Legislature information provided to the department by state agencies and political subdivisions.

(5) The department may request information from nongovernmental agencies and organizations to assist in preparing the fiscal note and the ten-year fiscal note.

SOURCES: Laws, 2014, ch. 457, § 64, effective from and after July 1, 2014.

Editor's Note — A former § 47-5-39 provided for the employment of a prison physician, a dentist, a psychiatrist and nurses, their compensation and residences, and provided that prison employees and dependents are entitled to free medical and dental care.

A former § 47-5-39 [Laws, 1964, ch. 378, § 41; Laws, 1966, ch. 380, § 1; Laws, 1971, ch. 524, § 9; Laws, 1973, ch. 320, § 1; Laws, 1974, ch. 539, § 9; Laws, 1975, ch. 425; Repealed by Laws, of 1976, ch. 440, § 92, eff from and after July 1, 1976] provided for the employment of a prison physician, a dentist, a psychiatrist and nurses, their compensation and residences, and provided that prison employees and dependents are entitled to free medical and dental care.

§ 47-5-41. Employees' oath of office.

All employees, before entering upon their duties, shall take and subscribe the following oath to be filed and preserved by the commissioner:

"I do solemnly swear (or affirm) that I will faithfully and diligently perform all the duties required of me as ________ of the correctional system, and will observe and execute the laws, rules and regulations passed and prescribed for the government thereof so far as the same concerns or pertains to any employment, and that I will not ill-treat or abuse any offender under my care contrary to the law and the rules and regulations prescribed by legal authority. So help me God."

SOURCES: Codes, 1942, § 7962; Laws, 1964, ch. 378, § 42; Laws, 1966, ch. 445, § 30; Laws, 1974, ch. 539, § 10; Laws, 1976, ch. 440, § 27; reenacted, Laws, 1981, ch. 465, § 23; reenacted, Laws, 1984, ch. 471, § 23; reenacted, Laws, 1986, ch. 413, § 23, eff from and after passage (approved March 28, 1986).

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Officers and Employees §§ 124 et seq.

CJS. 67 C.J.S., Officers and Public Employees § 46.

§ 47-5-43. Workers' compensation coverage.

The commissioner shall purchase workers' compensation insurance with coverage for all personnel employed by the department as authorized by law, and all personnel shall be entitled to the benefits prescribed by the operation of law, Sections 71-3-1 through 71-3-111, as the same is now or may hereafter be amended, cited as the "Workers' Compensation Law."

SOURCES: Codes, 1942, § 7962.5; Laws, 1971, ch. 439, § 1; Laws, 1976, ch. 440, § 28; reenacted, Laws, 1981, ch. 465, § 24; reenacted, Laws, 1984, ch. 471, § 24; reenacted and amended, Laws, 1986, ch. 413, § 24, eff from and after passage (approved March 28, 1986).

§ 47-5-45. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1964, ch. 378, § 67]

Editor's Note — Former § 47-5-45 related to qualifications of sergeants, guards and drivers, applications for employment, and uniforms.

§ 47-5-47. Nepotism prohibited; employees not to be interested in contracts.

It shall be unlawful for any person related by affinity or consanguinity within the third degree computed according to the rules of the civil law to the Governor, Lieutenant Governor or commissioner to accept any employment in the state correctional system, neither shall the commissioner or other officer or employee of the state correctional system be directly or indirectly interested in any contract, purchase or sale for or in behalf of or on account of the state correctional system.

SOURCES: Codes, 1942, § 7952; Laws, 1964, ch. 378, § 32; Laws, 1971, ch. 524, § 7; Laws, 1976, ch. 440, § 29; reenacted, Laws, 1981, ch. 465, § 25; reenacted, Laws, 1984, ch. 471, § 25; reenacted, Laws, 1986, ch. 413, § 25; Laws, 1988, ch. 504, § 13, eff from and after passage (approved May 6, 1988).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service. 11 A.L.R.4th 826.

§ 47-5-49. Employees not to engage in other business.

Neither the commissioner nor any other employee, save physicians and chaplains not employed for all their time, shall have or engage in any other business during his normal hours of employment that may require his personal attention or time. The Governor, in the case of the commissioner, and the commissioner in the case of any other employee shall receive prior notification and approve outside employment and the respective parties named herein shall punish a violation of this provision by the dismissal of the employee if the offense justifies such dismissal.

SOURCES: Codes, 1942, § 7953; Laws, 1964, ch. 378, § 33; Laws, 1971, ch. 524, § 8; Laws, 1976, ch. 440, § 30; reenacted, Laws, 1981, ch. 465, § 26; reenacted, Laws, 1984, ch. 471, § 26; reenacted, Laws, 1986, ch. 413, § 26; Laws, 1988, ch. 504, § 14, eff from and after passage (approved May 6, 1988).

JUDICIAL DECISIONS

1. Prohibited conduct.

Trial court erred in overturning the denial of unemployment benefits to a corrections employee who was terminated where the employee admitted to distributing bootleg copies of DVDs to coworkers while at work, in violation of Miss. Code Ann. § 47-5-49; employee also admitted knowing that distributing bootleg copies of DVDs was illegal under Miss. Code Ann. § 97-23-87(3)(a)(i) and Miss. Code Ann. § 97-23-89(2). Miss. Dep't of Corr. v. Scott, 929 So. 2d 975 (Miss. Ct. App. 2006).

§ 47-5-51. Repealed.

Repealed by Laws of 1983, ch. 469, § 10, eff from and after July 1, 1983.

[Codes, 1942, § 7954; Laws, 1964, ch. 378, § 34; Laws, 1976, ch. 440, § 31; reenacted, Laws, 1981, ch. 465, § 27]

Editor's Note — Former § 47-5-51 prohibited prison employees from having an interest in prison contracts.

§ 47-5-53. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976.

[Laws, 1964, ch. 378, § 37]

Editor's Note — Former § 47-5-53 prohibited prison officers or employees from owning, renting, leasing or working land within fifteen (15) miles of the state farm, and provided for a fine and dismissal.

§ 47-5-54. Status of employees as peace officers; promulgation and enforcement of speed limits upon grounds of correctional facilities.

Employees assigned to the canine unit of the department may, upon request, assist law enforcement agencies by using specially trained dogs in any matter relating to the tracking, discovery or capture of any person in the enforcement of criminal statutes pertaining to the possession, sale or use of narcotics or other dangerous drugs, or in the pursuit of suspected felons and, while so doing, shall have the status of peace officers anywhere in the state and shall have the status of law enforcement officers and peace officers as contemplated by Sections 45-6-3, 97-3-7 and 97-3-19.

Employees of the department while performing their officially assigned duties relating to the custody, control, transportation, recapture or arrest of any offender within the jurisdiction of the department or any offender of any jail, penitentiary, public workhouse or overnight lockup of the state or any political subdivision thereof not within the jurisdiction of the department, shall have the status of peace officers anywhere in the state in any matter relating to the custody, control, transportation or recapture of such offender, and shall have the status of law enforcement officers and peace officers as contemplated by Sections 45-6-3, 97-3-7 and 97-3-19.

The commissioner may appoint investigators with the Corrections Investigation Division who have been certified by the Board on Law Enforcement Officer Standards and Training and who shall be empowered to investigate and enforce all applicable regulations of the department, which are related to the functions and missions of the department, and all laws of the State of Mississippi and who shall be empowered to investigate and enforce all laws of the State of Mississippi in private correctional facilities and regional county correctional facilities. These employees shall have the status of law enforcement officers and peace officers as contemplated by Sections 45-6-3, 97-3-7 and 97-3-19.

These officers shall be under the supervision of the commissioner. These officers may perform any service of process required to be performed at any facility owned by the Department of Corrections, at any private correctional facility or at any regional county correctional facility.

The commissioner may promulgate rules regulating the speed of motor vehicles on roads within the grounds of any correctional facility and such restrictions may be enforced by employees of the department by citation or as otherwise prescribed by law.

SOURCES: Laws, 1976, ch. 440, § 18; reenacted, Laws, 1981, ch. 465, § 28; Laws, 1983, ch. 345; reenacted and amended, Laws, 1984, ch 471, § 27; reenacted, Laws, 1986, ch. 413, § 27; Laws, 1986, ch. 485, § 1; Laws, 1992, ch. 333, § 1; Laws, 1996, ch. 422, § 1; Laws, 1998, ch. 390, § 1; Laws, 2006, ch. 361, § 1; Laws, 2006, ch. 454, § 1, eff from and after passage (approved Mar. 23, 2006.)

Joint Legislative Committee Note — Section 1 of ch. 454, Laws of 2006, effective from and after passage (approved March 13, 2006), amended this section. Section 1 of ch. 361, Laws of 2006, effective from and after passage (approved March 23, 2006), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 361, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Mississippi Law Enforcement Officers' Training Academy, see §§ 45-5-1 et seq.

Definition of "law enforcement officer," see § 45-6-3.

Provision that the Commissioner of Corrections may set speed limits on roads of correctional facilities, which speed limits become effective when appropriate signs giving notice thereof are erected, see § 63-3-511.

Sexual penetration of incarcerated offenders by law enforcement officers or employees, see § 97-3-104.

ATTORNEY GENERAL OPINIONS

Correctional officers may be eighteen years of age unless they are designated with the status of "peace officer". Stringer, March 20, 1998, A.G. Op. #98-0125.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statute criminalizing possession of contraband by individual in penal or correctional institution. 45 A.L.R.5th 767.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 14, 17, 19-21, 23-25.

§ 47-5-55. Exemption from jury service.

The officers and employees of the state correctional system are exempt from jury service.

SOURCES: Codes, 1942, § 7974; Laws, 1964, ch. 378, § 54; Laws, 1976, ch. 440, § 32; reenacted, Laws, 1981, ch. 465, § 29; reenacted, Laws, 1984, ch. 471, § 28; reenacted, Laws, 1986, ch. 413, § 28, eff from and after passage (approved March 28, 1986).

Cross References — Exemptions from jury duty generally, § 13-5-23.

§ 47-5-56. Lease of property; operating funds; disposal of income; transfer of property.

The department shall lease to the Mississippi Commission on Wildlife, Fisheries and Parks for a period of twenty (20) years all timberlands in Quitman County for an annual rental of One Dollar ($1.00). The lands so leased to the Mississippi Commission on Wildlife, Fisheries and Parks shall be used and maintained as a public game and fish management area. Proceeds from the sale of the timber or from any forest management practice shall be deposited into the Lambert State Forest Revolving Fund created in Section 47-5-78. All costs associated with the management of timber shall be paid from the fund. The remaining funds shall then be deposited in the Prison Agricultural Enterprises Fund, as created in Section 47-5-66. Any timber needed in the building operations carried on by the department may be purchased by the department at a cost not to exceed the cost of the management of that timber. Upon the transfer of the real property described in Section 1 of Chapter 517, Laws of 2001, to the Department of Wildlife, Fisheries and Parks, the department and the Mississippi Department of Wildlife, Fisheries and Parks may terminate or modify as appropriate any lease entered into under this section regarding such property.

SOURCES: Laws, 1974, ch. 539, § 18; Laws, 1978, ch. 301, § 3; brought forward, Laws, 1981, ch. 465, § 30; reenacted and amended, Laws, 1984, ch. 421, § 1; reenacted, Laws, 1984, ch. 471, § 29; reenacted, Laws, 1986, ch. 413, § 29; Laws, 1988, ch. 504, § 15; Laws, 1992, ch. 506, § 11; Laws, 1996, ch. 337, § 2; Laws, 2000, ch. 362, § 1; Laws, 2001, ch. 517, § 2, eff from and after Mar. 30, 2001.

Editor's Note — Laws of 2001, ch. 517, § 1, provides as follows:

"Section 1. (1) The Department of Corrections shall transfer and convey to the Department of Wildlife, Fisheries and Parks for the consideration of Five Hundred

Thousand Dollars ($500,000.00) certain real property located in Quitman County, Mississippi, also known as the "O'Keefe Division Lands", described more specifically as follows:

"All Mississippi Department of Corrections lands that lie in Township 26, Range 1 West, Section 2 less the NW ¼ and the N ½ of the SW ¼, Section 3, Section 10, Section 11, Section 12, Section 13, Section 14, Section 15, Section 22, Section 23, Section 24, Section 25, Section 26, Section 27 of Quitman County, Mississippi.

"(2) The Department of Wildlife, Fisheries and Parks is authorized to acquire the property described in subsection (1) and to pay the consideration therefor out of any funds available. Upon completion of the conveyance, the Department of Wildlife, Fisheries and Parks shall assume all supervision, management, maintenance and control of the property described in subsection (1) of this section and shall receive all revenue derived from such property.

"(3) Any funds received from the sale of the property described in subsection (1) of this section shall be deposited into a special fund in the State Treasury to be used by the Mississippi Department of Corrections for the general support of the department. Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund. Any interest earned or investment earnings on amounts in the fund shall be deposited into the special fund."

Cross References — Agricultural extension services of Mississippi State University of Agriculture and Applied Science, see § 37-113-19.

Agricultural leases of prison lands to private entities, generally, see § 47-5-64.

Publication requirements and submission of bids relating to agricultural leases of prison lands to private entities, see § 47-5-66.

Establishment, regulation, and purchase of lands for game and fish management areas, see §§ 49-5-11 through 49-5-15.

Powers and duties of State Game and Fish Commission, see § 49-1-29.

Management by State Forestry Commission of growing and cutting of timber, see § 49-19-3.

RESEARCH REFERENCES

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 5.

73B C.J.S., Public Lands § 287-295.

§ 47-5-57. Repealed.

Repealed by Laws of 2001, ch. 517, § 3, eff from and after passage (approved March 30, 2001).

[Laws, 1997, ch. 412, § 1, eff from and after passage (approved March 24, 1997).]

Editor's Note — Former § 47-5-57 required a public hearing to be held before timber was cleared by the Department of Corrections on the O'Keefe Division Lands.

§ 47-5-58. Sales by commissary to persons or agencies.

The commissary located at any facility of the correctional system shall not sell to any person or agency, any food or other commodities, whether produced by the correctional system or not, for any amount less than the wholesale price of such food or other commodities in the area of the facility.

SOURCES: Laws, 1973, ch. 380, § 2; Laws, 1976, ch. 440, § 34; reenacted, Laws, 1981, ch. 465, § 32; reenacted, Laws, 1984, ch. 471, § 30; reenacted, Laws, 1986, ch. 413, § 30, eff from and after passage (approved March 28, 1986).

§ 47-5-59. Repealed.

Repealed by Laws of 1984, ch. 398, eff from and after July 1, 1984.

[Codes, 1942, § 7970; Laws, 1964, ch. 378, § 50; Laws, 1974, ch. 539, § 12; Laws, 1976, ch. 440, § 35; reenacted, Laws, 1981, ch. 465, § 33]

Editor's Note — Former § 47-5-59 pertained to price support loans from federal agencies.

§ 47-5-60. Repealed.

Repealed by Laws of 1992, ch. 506, § 14, eff from and after passage (approved May 15, 1992).

[Laws, 1974, ch. 539, § 20; Laws, 1976, ch. 440, § 36; reenacted, Laws, 1981, ch. 465, § 34; reenacted, Laws, 1984, ch. 471, § 31; Laws, 1984, ch. 488, § 220; reenacted, Laws, 1986, ch. 413, § 31]

Editor's Note — Former § 47-5-60 required the commissioner to transfer the title to all farm equipment, livestock, farm buildings and dwellings to the lessee of any lands leased from the Department of Corrections.

§ 47-5-61. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976.

[Laws, 1964, ch. 378, § 38; Laws, 1974, ch. 539, § 13]

Editor's Note — Former § 47-5-61 authorized the penitentiary board to insure the cotton and cottonseed raised on the state farms.

§ 47-5-62. Repealed.

Repealed by Laws of 1984, ch. 420, § 2, eff from and after July 1, 1984.

[Laws, 1974, ch. 539, § 22; Laws, 1976, ch. 440, § 37; Laws, 1978, ch. 301, § 4; reenacted, Laws, 1981, ch. 465, § 35]

Editor's Note — Former § 47-5-62 pertained to the status of leased farmlands.

§ 47-5-63. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976.

[Laws, 1964, ch. 378, § 51; Laws, 1974, ch. 539, § 14]

Editor's Note — Former § 47-5-63 dealt with the sale or other disposition of cotton, cottonseed, or other goods advertised for sale where no bids are received or bids are rejected.

§ 47-5-64. Agricultural leases of prison lands to private entities; reservation of additional land for agricultural or nonagricultural projects of Department of Corrections; lease of prison land for power generation or other commercial or industrial projects.

(1) The commissioner is hereby directed to determine the number of acres and location of land under the department's jurisdiction that are needed for security purposes, for Prison Agricultural Enterprises and for nonagricultural purposes. The commissioner shall designate and reserve such additional land for agricultural or nonagricultural enterprise projects of the department, as he deems necessary. The commissioner shall then recommend to the Department of Finance and Administration the number of acres of department land that should be leased to private entities and the term of the leases.

(2) The Department of Finance and Administration is authorized to lease for agricultural purposes that Penitentiary land so recommended for not less than three (3) nor more than eight (8) years, with the approval of the Public Procurement Review Board.

(3) The Department of Finance and Administration, with the approval of the Governor, the Secretary of State and the Commissioner of the Department of Corrections, is authorized to lease Penitentiary land for power generation projects or other commercial or industrial projects at the same time that it leases the land as prescribed in subsection (2) of this section. The Department of Finance and Administration is authorized to negotiate all aspects of leases or related agreements executed under this subsection consistent with the following:

(a) The period of the lease term combined with the term of renewal shall not exceed forty (40) years.

(b) Any lease or renewal lease shall:

(i) Provide for periodic rent adjustments throughout the term of the lease; and

(ii) Require the lessee to provide a decommissioning and restoration bond or other security securing the lessee's obligation to remove all aboveground and underground facilities to a depth of at least three (3) feet underground and to restore the surface to a condition similar to its condition before the commencement of the lease.

(c) Any lease or renewal lease may provide for any combination of the following: base rent, bonuses, percentage of income payments, royalty payments or other terms and conditions that the Department of Finance and Administration deems necessary to maintain a fair and equitable return to the state and to protect the leased land throughout the term of the lease or renewal lease.

(d) Oil, gas and mineral rights in the leased land shall be reserved to the State of Mississippi.

(e) This subsection does not authorize the sale or transfer of title to any state lands.

(f) The Department of Finance and Administration may charge fees and expenses, not to exceed costs, incurred in administering this subsection.

(g) Any monies derived from leasing lands under this subsection shall be deposited to the Prison Agricultural Enterprise Fund as provided in Section 47-5-66.

SOURCES: Laws, 1978, ch. 301, § 1; brought forward, Laws, 1981, ch. 465, § 36; reenacted, Laws, 1984, ch. 471, § 32; Laws, 1984, ch. 488, § 221; reenacted, Laws, 1986, ch. 413, § 32; Laws, 1986, ch. 425, § 1; Laws, 1988, ch. 504, § 16; Laws, 1992, ch. 506, § 12; Laws, 2007, ch. 351, § 1; Laws, 2012, ch. 538, § 1, eff from and after July 1, 2012.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Creation of the office of general services, see § 7-1-451.

Department of Finance and Administration generally, see §§ 27-104-101 et seq.

Leasing of sixteenth section lands, see §§ 29-3-51 et seq.

Publication requirements and submission of bids relating to agricultural leases of prison lands to private entities, see § 47-5-66.

Duties of the Public Procurement Review Board with respect to the leasing of prison agricultural lands, see § 47-5-66.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Lands § 67.

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 5.

§ 47-5-65. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1964, ch. 378, § 52; Laws, 1974, ch. 539, § 15]

Editor's Note — Former § 47-5-65 authorized the penitentiary board to engage the services of an agent for the sale of cotton.

§ 47-5-66. Agricultural leases of prison lands to private entities; procedures; methods of payment of rents; disposal of income; fee per acre in lieu of ad valorem taxes.

(1) Except as provided in Section 47-5-64(3), it shall be the duty of the Department of Finance and Administration, with the approval of the Public Procurement Review Board, to lease lands at public contract upon the submission of two (2) or more sealed bids to the Department of Finance and Administration after having advertised the land for rent in newspapers of general circulation published in Jackson, Mississippi; Memphis, Tennessee; the county in which the land is located; and contiguous counties for a period of not less than two (2) successive weeks. The first publication shall be made not

less than ten (10) days before the date of the public contract, and the last publication shall be made not more than seven (7) days before that date. The Department of Finance and Administration may reject any and all bids. If all bids on a tract or parcel of land are rejected, the Department of Finance and Administration may then advertise for new bids on that tract or parcel of land. Successful bidders shall take possession of their leaseholds at the time authorized by the Department of Finance and Administration. However, rent shall be due no later than the day upon which the lessee shall assume possession of the leasehold, and shall be due on the anniversary date for each following year of the lease. The Department of Finance and Administration may provide in any lease that rent shall be paid in full in advance or paid in installments, as may be necessary or appropriate. In addition, the Department of Finance and Administration may accept, and the lease may provide for, assignments of federal, state or other agricultural support payments, growing crops or the proceeds from the sale thereof, promissory notes, or any other good and valuable consideration offered by any lessee to meet the rent requirements of the lease. If a promissory note is offered by a lessee, it shall be secured by a first lien on the crop of the lessee, or the proceeds from the sale thereof. The lien shall be filed pursuant to Article 9 of the Uniform Commercial Code and Section 1324 of the Food Security Act of 1985, as enacted or amended. If the note is not paid at maturity, it shall bear interest at the rate provided for judgments and decrees in Section 75-17-7 from its maturity date until the note is paid. The note shall provide for the payment of all costs of collection and reasonable attorney's fees if default is made in the payment of the note. The payment of rent by promissory note or any means other than cash in advance shall be subject to the approval of the Public Procurement Review Board, which shall place the approval of record in the minutes of the board.

(2) There is created a special fund to be designated as the "Prison Agricultural Enterprises Fund" and to be used for the purpose of conducting, operating and managing the agricultural and nonagricultural enterprises of the department. Any monies derived from the leasing of Penitentiary lands, from the sales of timber as provided in Section 47-5-56, from the prison's agricultural enterprises or earmarked for the Prison Industries Fund shall be deposited to the special fund. However, fifteen percent (15%) of the monies derived from the leasing of Penitentiary lands under Section 47-5-64(3) shall be deposited to a special fund to be distributed annually on a student pro rata basis to the public schools located in Sunflower County by the Department of Finance and Administration.

(3) All profits derived from prison industries shall be placed in a special fund in the State Treasury to be known as the "Prison Industries Fund," to be appropriated each year by the Legislature to the nonprofit corporation, which is required to be organized under the provisions of Section 47-5-535, for the purpose of operating and managing the prison industries.

(4) The state shall have the rights and remedies for the security and collection of the rents given by law to landlords.

(5) Lands leased for agricultural purposes under Section 47-5-64(2) shall be subject to a fee-in-lieu of ad valorem taxes, including taxes levied for school

purposes. The fee-in-lieu shall be Nine Dollars ($9.00) per acre. Upon the execution of the agricultural leases to private entities as authorized by Section 47-5-64(2), the Department of Finance and Administration shall collect the in lieu fee and shall forward the fees to the tax collector in which the land is located. The tax collector shall disburse the fees to the appropriate county or municipal governing authority on a pro rata basis. The sum apportioned to a school district shall not be less than the school district's pro rata share based upon the proportion that the millage imposed for the school district by the appropriate levying authority bears to the millage imposed by the levying authority for all other county or municipal purposes. Any funds obtained by the corporation as a result of sale of goods and services manufactured and provided by it shall be accounted for separate and apart from any funds received by the corporation through appropriation from the State Legislature. All nonappropriated funds generated by the corporation shall not be subject to appropriation by the State Legislature.

(6) Any land leased, as provided under Section 47-5-64(2), shall not be leased for an amount less than would be received if such land were to be leased under any federal loan program. In addition, all leases shall be subject to the final approval of the Public Procurement Review Board before such leases are to become effective.

SOURCES: Laws, 1978, ch. 301, § 2; brought forward, Laws, 1981, ch. 465, § 37; reenacted, Laws, 1984, ch. 471, § 33; Laws, 1984, ch. 488, § 222; reenacted, Laws, 1986, ch. 413, § 33; Laws, 1987, ch. 463; Laws, 1988, ch. 504, § 17; Laws, 1989, ch. 308, § 1; Laws, 1990, ch. 534, § 24; Laws, 1992, ch. 506, § 13; Laws, 1994, ch. 369, § 1; Laws, 1996, ch. 388, § 1; reenacted and amended, Laws, 1997, ch. 367, § 1; reenacted and amended, Laws, 1998, ch. 420, § 1; Laws, 1999, ch. 536, § 1; Laws, 2000, ch. 362, § 2; Laws, 2001, ch. 363, § 1; Laws, 2002, ch. 334, § 1; Laws, 2004, ch. 483, § 1; reenacted and amended, Laws, 2006, ch. 396, § 1; Laws, 2007, ch. 576, § 1; Laws, 2008, ch. 321, § 1; Laws, 2009, ch. 420, § 1; Laws, 2012, ch. 538, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 1 of ch. 363 Laws, 2001, effective from and after passage (approved March 11, 2001), amended this section. Section 1 of ch. 407, Laws, 2001, effective from and after July 1, 2001 also amended this section. As set out above, this section reflects the language of Section 1 of ch. 407, Laws, 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws of 1987, ch. 463, § 2, provided for the repeal of this section effective July 1, 1991. Subsequently, Laws of 1989, ch. 308, § 2, amended Laws of 1987, ch. 463, § 2, so as to remove the provision for the repeal of this section.

Laws of 1994, ch. 369, § 2, provides as follows:

"SECTION 2. The Department of Corrections and the State Forestry Commission shall study and prepare a reforestation plan for prison lands. The Department of Corrections and the State Forestry Commission shall submit the plan and any other recommendations to the Senate Forestry Committee, the Senate Corrections Committee and the House Penitentiary Committee no later than September 2, 1994."

Cross References — Creation of the office of general services, see § 7-1-451.

Creation of tax lien by this section and time that such lien attaches, see § 27-35-1.

Sale by state forestry commission of timber from leased timberlands, see § 47-5-56.

Agricultural leases of prison lands to private entities, generally, see § 47-5-64.

Expenditures from and deposits to prison industries fund, see § 47-5-323.

Payment of per diem and expenses of members of the prison industries advisory council from the prison industries fund, see § 47-5-329.

Article 9 of the Mississippi Uniform Commercial Code, see §§ 75-9-101 et seq.

Federal Aspects — Section 1324 of the Food Security Act of 1985, see 7 USCS § 1631.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Lands § 67.

15A Am. Jur. Legal Forms 2d, Public Lands § 212:16 (notice — to potential bidders — for lease of public lands).

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 5.

§ 47-5-67. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1968, ch. 379; Laws, 1974, ch. 539, § 16]

Editor's Note — Former § 47-5-67 authorized the penitentiary board to engage the services of an agent for the sale of rice.

§ 47-5-69. Repealed.

Repealed by Laws of 1984, ch. 395, eff from and after July 1, 1984.

[Codes, 1942, § 7986; Laws, 1964, ch. 378, § 66; Laws, 1974, ch. 539, § 17; Laws, 1976, ch. 440, § 38; reenacted, Laws, 1981, ch. 465, § 38]

Editor's Note — Former § 47-5-69 authorized a lessee to join in program of National Cotton Council.

§ 47-5-70. "Board" and "lessee" defined.

As used in this chapter, "board" shall include the Mississippi Board of Corrections or its successor, and "lessee" shall mean the Mississippi Cooperative Extension Service.

SOURCES: Laws, 1974, ch. 538, § 19; Laws, 1976, ch. 440, § 39; reenacted, Laws, 1981, ch. 465, § 39; reenacted, Laws, 1984, ch. 471, § 34; reenacted, Laws, 1986, ch. 413, § 34, eff from and after passage (approved March 28, 1986).

§ 47-5-71. Construction or pavement of roads.

The State Highway Commission and the Mississippi Department of Corrections are hereby authorized to enter into and perform agreements to contract together for the construction or the pavement of roads by the State Highway Department in and adjoining to any facility of the correctional system.

SOURCES: Codes, 1942, § 7966; Laws, 1964, ch. 378, § 46; Laws, 1976, ch. 440, § 40; reenacted, Laws, 1981, ch. 465, § 40; reenacted, Laws, 1984, ch. 471, § 35; reenacted, Laws, 1986, ch. 413, § 35; Laws, 1988, ch. 504, § 18, eff from and after passage (approved May 6, 1988).

Editor's Note — Section 65-1-1 provides that whenever the term "Mississippi State Highway Department," or the term "department" meaning the Mississippi State Highway Department, appears in the laws of this state, it shall mean the Mississippi Department of Transportation.

Section 65-1-1 provides that whenever the term "Mississippi State Highway Department," or the term "department" meaning the Mississippi State Highway Department, appears in the laws of this state, it shall mean the Mississippi Department of Transportation, and whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Use of inmates of a correctional institution to work on projects of the Mississippi Department of Transportation, see §§ 47-5-133 and 65-1-8.

Composition of Mississippi Commission, see § 65-1-3.

§ 47-5-72. Establishment of regional recycling centers at regional correctional facilities; participation of inmates in recycling center work program.

The Department of Corrections, counties and municipalities are authorized to develop regional recycling centers at regional correctional facilities. The department may establish a work program for inmates to participate in the recycling program. Inmates that are ineligible to participate in joint state-county programs and public service programs are also ineligible to participate in the program established for regional recycling centers.

SOURCES: Laws, 2010, ch. 318, § 1, eff from and after July 1, 2010.

Cross References — Funding to assist in establishment of regional recycling centers, see § 17-17-65.

Funding to assist in establishment of regional recycling centers, see § 49-31-11.

§ 47-5-73. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1964, ch. 378, § 69]

Editor's Note — Former § 47-5-73 authorized the superintendent and penitentiary board to request any other state agencies to perform services in connection with prison programs.

§ 47-5-75. Suits by or against board of corrections; tort liability insurance.

The department is authorized to bring and maintain suits for the collection and enforcement of all demands and debts owing to the correctional system. No bond for costs, appeal bond, supersedeas bond or other security shall at any time be required of the department in any civil suit of any kind brought by or against it or its employees in their official capacity, except such suits as may be brought against it or them by the State of Mississippi. The Attorney General of the State of Mississippi is hereby directed to assist the department in the filing and prosecution of any suits filed herein.

The department shall have the further power and authority, in its discretion, to take adequate liability insurance on the operation of said correctional system, including liability insurance to protect the commissioner and other regular employees of the correctional system from tort actions in any state or federal court.

SOURCES: Codes, 1942, § 7929; Laws, 1964, ch. 378, § 9; Laws, 1971, ch. 524, § 13; Laws, 1976, ch. 440, § 41; reenacted, Laws, 1981, ch. 465, § 41; reenacted, Laws, 1984, ch. 471, § 36; reenacted and amended, Laws, 1984, ch. 495, § 21; Laws, 1985, ch. 474, § 51; reenacted, Laws, 1986, ch. 413, § 36; Laws, 1986, ch. 438, § 32; Laws, 1987, ch. 483, § 33; Laws, 1988, ch. 442, § 30; Laws, 1988, ch. 504, § 19; Laws, 1989, ch. 537, § 29; Laws, 1990, ch. 518, § 30; Laws, 1991, ch. 618, § 29; Laws, 1992, ch. 491, § 31, approved May 12, 1992, eff from and after July 1, 1993.

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance, see § 11-46-17.

JUDICIAL DECISIONS

1. In general.

The members of the Board of Corrections act in a general policy-making and supervisory capacity with respect to the various correctional institutions of the state. In cases involving the day-to-day operations of a corrections facility, normally the board members will have no potential liability. McFadden v. State, 542 So. 2d 871 (Miss. 1989).

RESEARCH REFERENCES

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 127.

§ 47-5-76. Payment of court costs for inmate's civil action against Department employee pertaining to condition of confinement.

(1) Except as provided in subsection (2) of this section, if an inmate plaintiff files a pauper's affidavit in a civil action and the defendant is an employee of the department and the civil action pertains to the inmate's condition of confinement, the department shall pay, out of any funds available for such purpose, all costs of court assessed against the inmate in the civil action. However, the department shall not pay the costs of court if the inmate has on three (3) or more prior occasions, while incarcerated, brought an action or appeal that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief could be granted.

An inmate shall not bring a civil action or appeal a judgment in a civil action or proceeding in forma pauperis if the prisoner has, on three (3) or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(2) An inmate who proceeds in forma pauperis in a civil action shall pay twenty percent (20%) per month of the funds in his or her inmate account to the Department of Corrections until all filing fees and costs of his or her litigation are paid to the department. The department may withdraw such funds automatically from the account of any inmate permitted a civil filing as a pauper. If an inmate is allowed an appeal in forma pauperis of a civil action, the inmate shall reimburse all costs and fees to the department by automatic withdrawal each month in the amount of twenty percent (20%) of his or her funds until all state funds are reimbursed.

SOURCES: Laws, 1989, ch. 378, § 2; Laws, 1993, ch. 402, § 1; Laws, 1996, ch. 395, § 1; Laws, 1998, ch. 387, § 1; Laws, 2005, ch. 392, § 1, eff from and after passage (approved Mar. 16, 2005.)

JUDICIAL DECISIONS

1. In general.

Pursuant to Miss. Code Ann. § 47-5-76(1), under limited circumstances the Mississippi department of corrections must pay court costs for an inmate who brings a civil action against a department employee; however, that civil action must pertain to the inmate's condition of confinement, and the inmate's lawsuit did not pertain to a condition of his confinement, and as such the inmate was not eligible to proceed in forma pauperis. Bessent v. Clark, 974 So. 2d 928 (Miss. Ct. App. 2007).

Statute requiring Department of Corrections to pay for inmate suits pertaining to conditions of confinement applies at trial level and not at appellate level. Carson v. Hargett, 689 So. 2d 753 (Miss. 1996).

Section 47-5-76, which requires the Department of Corrections to pay court costs for an inmate plaintiff proceeding in forma pauperis in a civil action against a Department employee pertaining to conditions of confinement, applies only at the trial level and not at the appeliate level. Moreno v. State, 637 So. 2d 200 (Miss. 1994).

§ 47-5-77. Remission to State Treasurer of funds belonging to correctional system; payment of bills and accounts of correctional system.

The commissioner shall remit to the State Treasurer all moneys belonging to the correctional system received by him in accordance with the provisions of Section 7-9-21. All bills and accounts of said correctional system shall be paid from appropriations made by the Legislature upon sworn accounts and warrants drawn by the State Fiscal Management Board on the State Treasurer in the same manner as provided by general law. Each account shall be approved by the commissioner or, in the commissioner's absence, by his designee.

SOURCES: Codes, 1942, § 7935; Laws, 1964, ch. 378, § 15; Laws, 1974, ch. 539, § 23; Laws, 1976, ch. 440, § 42; reenacted Laws, 1981, ch. 465, § 42; reenacted, Laws, 1984, ch. 471, § 37; Laws, 1984, ch. 488, § 223; reenacted, Laws, 1986, ch. 413, § 37; Laws, 1988, ch. 504, § 20, eff from and after passage (approved May 6, 1988).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Cross References — Duty of prison auditor with respect to bids, purchases, and sales, see § 47-5-35.

§ 47-5-78. Creation of the "Lambert State Forest Revolving Fund."

There is established within the State Treasury a revolving fund to fund forest management costs provided under Sections 47-5-56 and 47-5-66 for the Lambert State Forest in Quitman County and shall be disbursed as provided in those sections. The fund shall be called the "Lambert State Forest Revolving Fund," and moneys for the fund shall accrue from any revenues derived from the Lambert State Forest including, but not limited to, timber sales and any other revenue derived from forest management practices. The State Treasurer shall invest all monies in the fund, and interest earned on the investments shall be paid back into the fund and not into the General Fund. The fund shall be audited annually by the State Auditor.

SOURCES: Laws, 1996, ch. 337, § 1; Laws, 2000, ch. 362, § 3, eff from and after passage (approved Apr. 17, 2000.)

§ 47-5-79. How purchases to be made.

All contracts for the purchase of materials, supplies, equipment and sustenance for the offenders of the correctional system shall be made under the provisions of the state purchasing law, same being Sections 31-7-1 through 31-7-55.

SOURCES: Codes, 1942, § 7937; Laws, 1964, ch. 378, § 17; Laws, 1966, ch. 378, § 2; Laws, 1976, ch. 440, § 43; reenacted, Laws, 1981, ch. 465, § 43; reenacted, Laws, 1984, ch. 471, § 38; reenacted, Laws, 1986, ch. 413, § 38, eff from and after passage (approved March 28, 1986).

Cross References — Restrictions on governmental purchases of foreign beef, see §§ 31-7-61 to 31-7-65.

Duty of auditor for the correctional system with respect to bids, purchases, and sales, see § 47-5-35.

§§ 47-5-81, 47-5-83. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1964, ch. 378, §§ 63, 39]

Editor's Note — Former § 47-5-81 required daily delivery of provisions and supplies to the camps on Parchman farm, and records to be kept thereof.

Former § 47-5-83 dealt with the operation and management of the prison hospital at Sunflower farm.

§ 47-5-85. Chapel for religious worship; chaplain.

There shall be provided an area at each facility of the correctional system for religious worship to be conducted by the chaplain's office of the Mississippi Department of Corrections. The chaplains will have ingress and egress to all facilities of the Mississippi Department of Corrections for the purpose of providing religious services to the offenders incarcerated therein.

SOURCES: Codes, 1942, § 7975; Laws, 1964, ch. 378, § 55; Laws, 1976, ch. 440, § 44; reenacted, Laws, 1981, ch. 465, § 44; reenacted and amended, Laws, 1984, ch. 385; reenacted, Laws, 1984, ch. 471, § 39; reenacted, Laws, 1986, ch. 413, § 39, eff from and after passage (approved March 28, 1986).

JUDICIAL DECISIONS

1. In general.

State prison regulations effectively preventing Muslim inmates from attending weekly congregational service do not violate First Amendment's free exercise of religion clause. O'Lone v. Estate of Shabazz, 482 U.S. 342, 107 S. Ct. 2400, 96 L. Ed. 2d 282 (1987), on remand, 829 F.2d 32 (3rd Cir. N.J. 1987).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 33, 34, 37-43, 45, 46.

Lawyers' Edition. Supreme Court's views as to prisoner's right to free exercise of religion under Federal Constitution's First Amendment. 96 L. Ed. 2d 736.

§ 47-5-87. No gasoline or motor oil to be sold.

No gasoline or motor oil shall be sold for personal use by the state correctional system to any of its employees. Gasoline shall be delivered only in tank truck or tank car lots in such quantities as the commissioner may deem necessary, and motor oil in such quantities as may be needed.

SOURCES: Codes, 1942, § 7982; Laws, 1964, ch. 378, § 62; Laws, 1976, ch. 440, § 45; reenacted, Laws, 1981, ch. 465, § 45; reenacted, Laws, 1984, ch. 471, § 40; reenacted, Laws, 1986, ch. 413, § 40, eff from and after passage (approved March 28, 1986).

Cross References — Duty of auditor for the correctional system with respect to bids, purchases, and sales, see § 47-5-35.

§ 47-5-89. No solicitation nor contribution for political purposes.

If any officer or employee of the state or county government, or any employee of the state correctional system, or any other person shall solicit or accept from any employee of the state correctional system, or from any offender therein, any contribution of money or other property for political or election purposes he shall be guilty of a misdemeanor, and on conviction shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or imprisoned in the county jail not less than sixty (60) days nor longer than one hundred twenty (120) days, or both, and if an employee of the state correctional system he shall be immediately and permanently removed from further employment with the state correctional system.

SOURCES: Codes, 1942, § 7984; Laws, 1964, ch. 378, § 64; Laws, 1976, ch. 440, § 46; reenacted, Laws, 1981, ch. 465, § 46; reenacted, Laws, 1984, ch. 471, § 41; reenacted, Laws, 1986, ch. 413, § 41, eff from and after passage (approved March 28, 1986).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 47-5-91. Transportation of children of employees to school; payment of tuition.

The commissioner is authorized and directed to provide for transportation of children of employees of the Mississippi State Penitentiary both in Sunflower County and Quitman County to a public elementary or secondary school located in those counties and to pay for such transportation out of the support and maintenance fund of the department of correction. The commissioner shall further pay to any public elementary or secondary school located in said counties which said children are sent, an amount not to exceed Sixty Dollars ($60.00) per student per month as tuition, which also shall be paid out of the support and maintenance fund of the department of correction. Any student who receives benefits under this section shall not be eligible for any other educational financial state grant or loan.

SOURCES: Codes, 1942, § 7967; Laws, 1964, ch. 378, § 47; Ex Sess, 1969, ch. 36, § 1; Laws, 1975, ch. 404; Laws, 1976, ch. 440, § 63; reenacted, Laws, 1981, ch. 465, § 47; reenacted, Laws, 1984, ch. 471, § 42; reenacted, Laws, 1986, ch. 413, § 42, eff from and after passage (approved March 28, 1986).

§ 47-5-93. Governor to make inspections.

It shall be the duty of the Governor to make personal inspection of the central facilities of the state correctional system and offenders twice during each and every year at such times as may suit his convenience, and without previous notice to the commissioner, and the commissioner, when required so to do, shall afford all necessary facilities for making such inspection.

SOURCES: Codes, 1942, § 7969; Laws, 1964, ch. 378, § 49; Laws, 1976, ch. 440, § 47; reenacted, Laws, 1981, ch. 465, § 48; reenacted, Laws, 1984, ch. 471, § 43; reenacted, Laws, 1986, ch. 413, § 43, eff from and after passage (approved March 28, 1986).

Cross References — Duties of Governor generally, see § 7-1-5.

JUDICIAL DECISIONS

1. In general.

The governor's duties under §§ 47-5-93 and 7-1-5(c) and (d) are discretionary and, as such, the governor enjoys a qualified immunity to a civil suit for damages based on the governor's alleged failure to perform his duties under those statutes. McFadden v. State, 542 So. 2d 871 (Miss. 1989).

§ 47-5-94. Annual structural and environmental inspections; report of findings.

The Bureau of Building, Grounds and Real Property Management of the Department of Finance and Administration and the State Board of Health are hereby authorized and directed, upon the passage of this section, to institute permanent annual structural and environmental inspections of institutional housing and service facilities at the State Penitentiary, such inspections to include but not be limited to, structural soundness, repairs and maintenance of buildings; food service; fire and safety hazards; fresh water supply; wastewater system; sewage collection and treatment; solid waste collection, storage and disposal; rodent and pest control and general institutional housekeeping.

All other state agencies, authorities, boards, commissions and departments are hereby directed, upon the request of the Commissioner of Corrections, the Bureau of Building, Grounds and Real Property Management of the Department of Finance and Administration or the State Board of Health, to assist in such inspections with the fullest degree of reasonable cooperation.

Within thirty (30) days of the completion of the inspections provided for herein, the participants shall compile a written report of their findings which shall be submitted to the Governor, the Commissioner of Corrections and the Warden or Superintendent of the State Penitentiary at Parchman.

SOURCES: Laws, 1978, ch. 447, § 2; brought forward, Laws, 1981, ch. 465, § 49; reenacted, Laws, 1984, ch. 471, § 44; reenacted and amended, Laws, 1986, ch. 413, § 44; Laws, 1994, ch. 480, § 1, eff from and after July 1, 1994.

ATTORNEY GENERAL OPINIONS

Only insofar as Section 47-5-94 is applicable, Bureau of Building, Grounds and Real Property Management of Governor's Office of General Services and State Board of Health are required to inspect State Penitentiary at Parchman, Mississippi and not other correctional facilities. Cobb, July 15, 1992, A.G. Op. #92-0494.

§ 47-5-95. Officials to be admitted to places where offenders kept and worked; visitors to correctional system facilities.

The members of the executive department, except the Governor and Lieutenant Governor, and judicial departments of the state and members of the Legislature, shall with advance notice to the commissioner be admitted into the correctional system or any facility thereof, and other places where offenders are kept and worked, at all proper hours, for the purpose of observing the conduct thereof, and may hold conversations with the offenders apart from all correctional system officials. Other persons may visit a correctional system facility under such rules and regulations as may be established by the commissioner who shall be liable to the state on his bond for negligence in security and in an amount to be determined by the courts.

SOURCES: Codes, 1942, § 7950; Laws, 1964, ch. 378, § 30; Laws, 1974, ch. 539, § 24; Laws, 1976, ch. 440, § 48; reenacted, Laws, 1981, ch. 465, § 50; reenacted, Laws, 1984, ch. 471, § 45; reenacted, Laws, 1986, ch. 413, § 45, eff from and after passage (approved March 28, 1986).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 85, 87, 91.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 100-102.

§ 47-5-97. Repealed.

Repealed by Laws, 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1964, ch. 378, § 68]

Editor's Note — Former § 47-5-97 dealt with periodic investigations of prison security measures and reports thereon, and authorized the penitentiary board to require persons entering the penitentiary to be searched.

§ 47-5-99. Creation of classification hearing officers and disciplinary hearing officers.

There are hereby created classification hearing officers and disciplinary hearing officers of the correctional system to be appointed by the commissioner.

SOURCES: Laws, 1973, ch. 309, § 1; Laws, 1976, ch. 440, § 49; reenacted, Laws, 1981, ch. 465, § 51; reenacted, Laws, 1984, ch. 471, § 46; reenacted, Laws, 1986, ch. 413, § 46; Laws, 1991, ch. 360 § 1; Laws, 2001, ch. 393, § 1, eff from and after July 1, 2001.

JUDICIAL DECISIONS

1. Construction.

Miss Code Ann. §§ 47-5-99 to 47-5-103 (1972) do not create an expectation of any particular classification. McLemore v. Greer, — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 25365 (S.D. Miss. Oct. 18, 2005).

§ 47-5-101. Meetings and minutes of classification and disciplinary hearing officers.

The classification and disciplinary hearing officers shall maintain a record of all actions and orders by minutes. The hearing officers shall meet on a regular basis.

SOURCES: Laws, 1973, ch. 309, § 1; brought forward, Laws, 1981, ch. 465, § 52; reenacted, Laws, 1984, ch. 471, § 47; reenacted, Laws, 1986, ch. 413, § 47; Laws, 1991, ch. 360, § 2; Laws, 2001, ch. 393, § 2, eff from and after July 1, 2001.

§ 47-5-103. Powers and duties of classification hearing officer and classification board as to classification of offenders.

(1) The classification hearing officer shall be responsible for assigning a classification to each offender within forty (40) days after the offender's commitment to the custody of the department. The classification shall determine the offender's work duties, living quarters, educational, vocational or other rehabilitation programs, and privileges to be accorded the offender while in custody of the department. The classification hearing officer, in assigning classifications, shall consider the offender's age, offense and surrounding circumstances, the complete record of the offender's criminal history including records of law enforcement agencies or of a youth court regarding that offender's juvenile criminal history, family background, education, practical or employment experience, interests and abilities as evidenced by mental and psychological examination and knowledge obtained by the classification hearing officer in personal interview with the offender. The classification hearing officer shall use the above criteria to assign each offender a classification which

will serve and enhance the best interests and general welfare of the offender. The designee or designees of the commissioner shall approve or disapprove each classification. The classification hearing officer shall provide the State Parole Board with a copy of the classification assigned to each offender in the custody of the department who is eligible for parole.

(2) The classification board, consisting of the commissioner, or his designee, deputy commissioner of institutions and the director of offender services may change an action of the classification or disciplinary hearing officer if the board makes a determination that the action of the hearing officer was not supported by sufficient factual information. The commissioner, in emergency situations, may suspend the classification of an offender or offenders for a period of not exceeding fifteen (15) days to relieve the emergency situation. The classification of each offender may be reviewed by a classification hearing officer at least once each year. In no case shall an offender serve as a servant in the home of any employee other than authorized by the commissioner.

(3) The classification board shall establish substantive and procedural rules and regulations governing the assignment and alteration of inmate classifications, and shall make such rules and regulations available to any offender upon request.

SOURCES: Laws, 1973, ch. 309, § 2; Laws, 1976, ch. 440, § 50; Laws, 1981, ch. 381, § 1; reenacted, Laws, 1981, ch. 465, § 53; Laws, 1983, ch. 375, § 1; reenacted, Laws, 1984, ch. 471, § 48; reenacted, Laws, 1986, ch. 413, § 48; Laws, 1986, ch. 422, § 2; Laws, 1991, ch. 360, § 3; Laws, 1995, ch. 417, § 1; Laws, 2001, ch. 393, § 3; Laws, 2004, ch. 338, § 1, eff from and after July 1, 2004.

Cross References — Disclosure of youth court records, see § 43-21-261.

Authority of classification committee regarding commutation of time for good conduct, see § 47-5-139.

JUDICIAL DECISIONS

1. In general.

Inmate's conviction for carrying a concealed weapon was enough to have him removed from the Community Work Center and placed at a state prison; inmates had no property or liberty interest as to their housing assignment. Hamilton v. Ruffin, 875 So. 2d 1125 (Miss. Ct. App. 2004).

Under Mississippi law, classification of inmates is the responsibility of Department of Corrections, and inmate has no right to particular classification; thus, prison inmate whose custody status was reduced to "close custody" classification has no liberty interest in classification under Due Process Clause, and where prison officials did not abuse discretion in changing custody status, prisoner is not entitled to preliminary injunctions against physical restraints to which he was subjected as result of change in status. Tubwell v. Griffith, 742 F.2d 250 (5th Cir. 1984).

§ 47-5-104. Demotion of offender or forfeiture of earned time.

The commissioner shall designate a disciplinary hearing officer to hear evidence and to make decisions in all cases when an offender has been issued a rule violation report and is subject to be demoted or having earned time taken from him. All proceedings of a disciplinary hearing officer shall be taped and retained for at least three (3) years. The commissioner shall not attend any hearings whereby an offender is subject to be demoted or having earned time taken away.

SOURCES: Laws, 1975, ch. 485, § 3; Laws, 1976, ch. 440, § 51; reenacted, Laws, 1981, ch. 465, § 54; reenacted, Laws, 1984, ch. 471, § 49; reenacted, Laws, 1986, ch. 413, § 49; Laws, 1991, ch. 360 § 4; Laws, 2001, ch. 393, § 4, eff from and after July 1, 2001.

Cross References — Classification of offenders for earned time purposes, see § 47-5-139.

§ 47-5-105. Entry of bids, bills, and invoices in minutes before award or payment; copies to be sent.

The award of all contracts in excess of Five Hundred Thousand Dollars ($500,000.00) entered into by the commissioner shall be approved by the Public Procurement Review Board and shall be entered on the minutes of such board before any funds shall be expended therefor. Provided further, that the entrance of the award of contracts on the minutes of the Public Procurement Review Board shall contain a detailed accounting of all bids entered showing clearly the lowest bid and best bid that was awarded in each and every case and, if the bid accepted is not the lowest, then the reasons and justification for not accepting the lowest bid shall be spread on the minutes. A true copy of the minutes of each meeting of such Public Procurement Review Board shall be sent monthly to the Governor, members of the Legislative Budget Office and Chairmen of the Corrections Committees of the Senate and the House of Representatives.

SOURCES: Laws, 1974, ch. 539, § 27; Laws, 1976, ch. 440, § 52; reenacted, Laws, 1981, ch. 465, § 55; reenacted, Laws, 1984, ch. 471, § 50; Laws, 1984, ch. 488, § 224; reenacted, Laws, 1986, ch. 413, § 50; Laws, 1988, ch. 504, § 21; Laws, 2012, ch. 388, § 1, eff from and after July 1, 2012.

Cross References — Creation of the Office of General Services, see § 7-1-451.

Duty of auditor for the correctional system with respect to bids, purchases, and sales, see § 47-5-35.

RESEARCH REFERENCES

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 5.

§ 47-5-107. Cancellation of contracts.

Any contract entered into by any person, firm or corporation with the department can be cancelled, in the discretion of the commissioner, upon a finding of fact by the correctional system auditor provided for in Section

47-5-35, and entered on the minutes of the Public Procurement Review Board, that the person, firm or corporation doing business with the correctional system has violated either the published regulations of the correctional system or the laws of the State of Mississippi.

SOURCES: Laws, 1974, ch. 539, § 28; Laws, 1976, ch. 440, § 53; reenacted, Laws, 1981, ch. 465, § 56; reenacted, Laws, 1984, ch. 471, § 51; reenacted, Laws, 1986, ch. 413, § 51; Laws, 1988, ch. 504, § 22, eff from and after passage (approved May 6, 1988).

Cross References — Duty of auditor for the correctional system with respect to bids, purchases, and sales, see § 47-5-35.

RESEARCH REFERENCES

ALR. Differences in character or quality of materials, articles, or work as affecting acceptance of bid for public contract. 27 A.L.R.2d 917.

Right of public authorities to reject all bids for public work or contract. 31 A.L.R.2d 469.

Am Jur. 64 Am. Jur. 2d, Public Works and Contracts § 70.

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 5.

§ 47-5-108. Self-sustaining food facilities established at certain penitentiary and correctional facilities; Employee Cafeteria Funds.

The Mississippi Department of Corrections is hereby authorized to provide self-sustaining facilities for the preparation and serving of food for employees and visitors of the Mississippi State Penitentiary, the Central Mississippi Correctional Facility, and the South Mississippi Correctional Institution. The commissioner shall promulgate policies and procedures for the operation of such facilities. In addition, the funds derived from these operations shall remain in separate accounts, hereafter known as the "Employee Cafeteria Funds." The profits, if any, shall be distributed at the direction of the Commissioner of Corrections.

SOURCES: Laws, 1983, ch. 354; brought forward, Laws, 1984, ch. 471, § 52; Laws, 1986, ch. 358, § 2; reenacted, Laws, 1986, ch. 413, § 52; Laws, 1989, ch. 305, § 1; Laws, 1992, ch. 326, § 1, eff from and after July 1, 1992.

§ 47-5-109. Operation of inmate canteen facilities; Canteen Fund.

(1) The State Department of Corrections is hereby authorized to operate a facility or facilities to be known as an inmate canteen facility or facilities, the purpose of which is to make available certain goods and other items of value for purchase by offenders confined at the State Penitentiary at Parchman, offenders confined at any other facility of the department, certain employees of the department and certain persons visiting offenders or employees. The

commissioner shall promulgate rules and regulations for the operation of such a facility.

(2) Any funds which may be derived from the operation of an inmate canteen facility or facilities shall be deposited into an account to be known as the Canteen Fund. For accounting purposes, certain allocated costs attributable to the operation of such a facility, and as prescribed by the rules and regulations of the board, shall be chargeable as operating costs against profits earned. These costs of operation which are chargeable shall include, but shall not be limited to, rent allocation, utility allocation and employee wages. Any net profits which may accrue from the operation of such a facility and any interest earned thereon shall be deposited into the Inmate Welfare Fund.

SOURCES: Laws, 1986, ch. 358, § 1; Laws, 1988, ch. 504, § 23, eff from and after passage (approved May 6, 1988).

ATTORNEY GENERAL OPINIONS

There is no statutory authority that would require a jail canteen to operate on a cash basis system; therefore, a sheriff may operate a jail canteen on a cashless system under the statute. Weissinger, June 26, 1998, A.G. Op. #98-0333.

This section is not authority for a county board of supervisors to directly commit the profits from an inmate canteen fund to a contract for the provision of various programs and treatment services at a jail facility, such as inmate records system, substance abuse treatment program, GED program, chaplaincy and religious services, law library services, recreation program, etc. Webb, June 4, 1999, A.G. Op. #99-0245.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 4-14, 22.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 2-4.

§ 47-5-109.1. Contract for administration of inmate canteen services.

(1) The Department of Corrections shall contract for the administration of inmate canteen services to a third party. Such contract shall comply with the procedures set forth in this section:

(a) The Department of Corrections shall cause to be prepared a request for proposals. This request for proposals shall be prepared for distribution to any interested third party. Notice of the department's intention to seek proposals shall be published in a newspaper of general circulation at least one time per week for three (3) weeks before closing the period for interested parties to respond. Additional forms of notice may also be used. The newspaper notice shall inform the interested parties of the service to be contracted, existence of a request for proposals, how it can be obtained, when a proposal must be submitted, and to whom the proposal must be submitted. All requests for proposals shall describe clearly what service is to be contracted, and shall fully explain the criteria upon which an evaluation of proposals shall be based. The criteria to be used for evaluations shall, at a minimum, include:

(i) Require interested third parties to describe their qualifications to provide inmate canteen services to correctional facilities in widely dispersed geographical regions; and

(ii) Describe the department's expectations with regard to commissions, pricing and quality assurance for inmate canteen services.

(b) All proposals submitted by interested parties shall be evaluated by the Inmate Welfare Fund Committee, as established in Section 47-5-158, which shall apply the same criteria to all proposals when conducting an evaluation. The results and recommendations of the evaluation shall be presented to the Department of Corrections for review. All evaluations presented to the department shall be retained by the department for at least three (3) years. The department may accept or reject any recommendation of the committee, or it may conduct further inquiry into the proposals. Any further inquiry shall be clearly documented and all methods and recommendations shall be retained by the department and shall spread upon its minutes its choice of the administrator for inmate canteen services and its reasons for making the choice.

(c)(i) The department shall be responsible for preparing a contract that shall be in accordance with all provisions of this section and all other provisions of law. The contract shall also include a requirement that the contractor shall consent to an evaluation of its performance. Such evaluation shall occur after the first six (6) months of the contract, and shall be reviewed at times the department determines to be necessary. The contract shall clearly describe the standards upon which the contractor shall be evaluated.

(ii) The PEER Committee, at the request of the House or Senate Corrections Committee and with funds specifically appropriated by the Legislature for such purpose, shall contract with an accounting firm or with other professionals to conduct a compliance audit of the services provided by the contractor. Such audit shall review the compliance with the performance standards required for inclusion in the administrator's contract. Such audit shall be delivered to the Legislature no later than January 1.

(2) Contracts for the administration of inmate canteen services shall commence at the beginning of the calendar year and shall end on the last day of a calendar year. This shall not apply to contracts provided for in subsection (3) of this section.

(3) If the Department of Corrections determines that it is necessary to not renew the contract of an administrator, or finds it necessary to terminate a contract with or without cause as provided for in the contract of the administrator of inmate canteen services, the department is authorized to select an administrator for inmate canteen services without complying with the bid requirements in subsections (1) and (2) of this section. Such contracts shall be for the balance of the calendar year in which the nonrenewal or termination

occurred, and may be for an additional calendar year if the department determines that the best interests of the inmates are served by such. Any contract negotiated on an interim basis shall include a detailed transition plan which shall ensure the orderly transfer of responsibilities between contractors.

(4) Except for contracts executed under the authority of subsection (3) of this section, the department shall select administrators of inmate canteen services at least six (6) months before the expiration of the current administrator's contract. The period between the selection of the new administrator of inmate canteen services and the effective date of the new contract shall be known as the transition period. The Department of Corrections shall furnish the Legislature and Governor with copies of all transition plans and keep them informed of progression on such plans.

SOURCES: Laws, 2015, ch. 432, § 2, eff from and after July 1, 2015.

OFFENDERS

Sec.
47-5-110. Commitments to be to department and not to particular institutions or facilities; transfers of offenders; community prerelease program; conditions; immunity for commissioner of corrections; evidence-based programs for benefit of inmates.
47-5-110.1. Offenders to pay costs of requested transfers between facilities.
47-5-110.2. Persons sentenced to custody of department after January 1, 2017, can no longer be sentenced to regimented inmate discipline program.
47-5-111. Transportation of offenders to correctional system facilities; processing of offenders at receiving stations.
47-5-112. Repealed.
47-5-113. Offenders of the United States courts.
47-5-115. Offenders whose capital sentences are commuted.
47-5-116. Installation of "Biddle guard" on vehicle transporting prisoner.
47-5-117. Repealed.
47-5-119. Initial search of offender; disposition of money found thereon; misappropriation of offender's money.
47-5-120. Transfer of offender for observation, diagnosis and treatment; board of examiners established to examine condition of certain offenders.
47-5-121. Separation of sexes.
47-5-122. Agricultural production as part of disciplinary or other programs; contracts for federal subsidies.
47-5-123. Repealed.
47-5-124. Uniform designations for offenders; restrictions on possession of radios, televisions and similar electronic devices; restrictions on weight lifting programs.
47-5-125. Repealed.
47-5-126. Working of inmates.
47-5-127. Repealed.
47-5-128. Repealed.
47-5-129. Offenders to work certain roads; Sunflower County.
47-5-131. Offenders to work certain roads; Quitman County.
47-5-132. Housing of prisoners; "hot racking," tents and "double bunking."
47-5-133. Drainage of correctional system property; restriction on working of offenders off correctional system property.

47-5-134. Offenders to work for Habitat for Humanity or the Fuller Center for Housing, Inc.
47-5-135 and 47-5-136. Repealed.
47-5-137. Use of offenders as servants prohibited; exception.
47-5-138. Earned time allowances; earned-release supervision; promulgations of rules and regulations; forfeiture generally; release of offender; phase-out of earned time release.
47-5-138.1. Trusties authorized to accumulate additional earned time; certain offenders in trusty status ineligible for time allowance.
47-5-139. Certain inmates ineligible for earned time allowance; commutation to be based on total term of sentences; forfeiture of earned time in event of escape.
47-5-140. Earned time handbook.
47-5-141. Repealed.
47-5-142. Meritorious earned time.
47-5-143 and 47-5-145. Repealed.
47-5-147. Governor may authorize payment of reward for apprehension of escaped offender.
47-5-149. United States offenders subject to the laws of the state.
47-5-151. Death of prisoner; investigations, inquests, and autopsies; fees; penalties.
47-5-153. Repealed.
47-5-155. Discharged offenders revolving fund.
47-5-157. Written discharge or release, clothing, Mississippi driver's license or state identification card, money and bus ticket furnished to discharged or released offender.
47-5-158. Inmate Welfare Fund.
47-5-159 through 47-5-171. Repealed.
47-5-173. Granting of leave for personal reasons.
47-5-175. Agreements to transfer state offenders to federal facilities.
47-5-177. Notice requirements prior to release of offenders.
47-5-179. Department of Corrections to deduct nonemergency medical expenses from inmate accounts.
47-5-180. Appointment of commissioner to make health-care decisions for offender who lacks capacity and does not have relative available; procedure; applicability of Uniform Health-Care Decisions Act.
47-5-181. Conversion of community work centers to pre-release centers.
47-5-183. Department of Corrections may create a postconviction DNA database.

§ 47-5-110. Commitments to be to department and not to particular institutions or facilities; transfers of offenders; community prerelease program; conditions; immunity for commissioner of corrections; evidence-based programs for benefit of inmates.

(1) Commitment to any institution or facility within the jurisdiction of the department shall be to the department, not to a particular institution or facility. The commissioner shall assign a newly committed offender to an appropriate facility consistent with public safety; provided, however, that any offender who, in the opinion of the sentencing judge, requires confinement in a maximum security unit shall be assigned, upon initial commitment, to the Parchman facility. The commissioner may extend the place of confinement of

eligible offenders as provided under subsection (2) of this section. He may transfer an offender from one (1) institution to another, consistent with the commitment and in accordance with treatment, training and security needs. The commissioner shall have the authority to transfer inmates from the various correctional facilities of the department to restitution centers if such inmates meet the qualifications prescribed in Section 99-37-19. The commissioner shall prepare appropriate standards of eligibility for such transfers of offenders from one (1) institution to another institution and transfers of offenders who meet the qualifications for placement in restitution centers. The commissioner shall have the authority to remove the offenders from restitution centers and to transfer them to other facilities of the department. The commissioner shall obtain the approval of the sentencing court before transferring an offender committed to the department to a restitution center. On the request of the chief executive officer of the affected unit of local government, the commissioner may transfer a person detained in a local facility to a state facility. The commissioner shall determine the cost of care for that person to be borne by the unit of local government. The commissioner may assign to a community work center, any offender who is convicted under the Mississippi Implied Consent Law and who is sentenced to the custody of the Department of Corrections, except that if a death or a serious maiming has occurred during the commission of the violation of the Mississippi Implied Consent Law, then the offender so convicted may not be assigned to a community work center.

(2) The department may establish by rule or policy and procedure a community prerelease program which shall be subject to the following requirements:

(a) The commissioner may extend the limits of confinement of offenders serving sentences for violent or nonviolent crimes who have six (6) months or less remaining before release on parole, conditional release or discharge to participate in the program. Parole violators may be allowed to participate in the program.

(b) Any offender who is referred to the program shall remain an offender of the department and shall be subject to rules and regulations of the department pertaining to offenders of the department until discharged or released on parole or conditional release by the State Parole Board.

(c) The department shall require the offender to participate in work or educational or vocational programs and other activities that may be necessary for the supervision and treatment of the offender.

(d) An offender assigned to the program shall be authorized to leave a community prerelease center only for the purpose and time necessary to participate in the program and activities authorized in paragraph (c) of this subsection.

(3) The commissioner shall have absolute immunity from liability for any injury resulting from a determination by the commissioner that an offender shall be allowed to participate in the community prerelease program.

(4)(a) The department may by rule or policy and procedure provide evidence-based programs for the benefit of inmates, with emphasis on those that are targeted at reducing inmate recidivism and prerelease service for offenders at each of its major correctional facilities: Mississippi State Penitentiary, Central Mississippi Correctional Institution and South Mississippi Correctional Institution and other facilities where the department confines state inmates.

(b) The commissioner may establish prerelease programs at the South Mississippi Correctional Institution. The prerelease program may be located on the grounds of this facility or another facility designated by the commissioner.

(c) For purposes of this subsection, the term "evidence-based programs" shall have ascribed to it the meaning in Section 27-103-159.

SOURCES: Laws, 1976, ch. 440, § 16; reenacted, Laws, 1981, ch. 465, § 57; reenacted, Laws, 1984, ch. 471, § 53; reenacted, Laws, 1986, ch. 413, § 53; Laws, 1986, ch. 428, § 1; Laws, 1993, ch. 578, § 1; Laws, 1997, ch. 371, § 1; Laws, 2003, ch. 552, § 2; Laws, 2005, ch. 505, § 1; Laws, 2007, ch. 353, § 1; Laws, 2012, ch. 391, § 1; Laws, 2015, ch. 463, § 2, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment in (4)(a), substituted "evidence-based programs for the benefit of inmates, with emphasis on those that are targeted at reducing inmate recidivism" for "the regimented inmate discipline program" near the beginning, and added "and other facilities where the department confines state inmates" at the end; in (b), deleted "regimented inmate discipline and" preceding "prerelease programs at the South Mississippi Correctional Institution" in the first sentence, and deleted the former second sentence, which read: "Offenders assigned to this facility may receive the services provided by the regimented inmate discipline program"; and added (c).

Cross References — Provisions relative to prison system overcrowding and the exercise of powers which tend to reduce prison system population or expand operating capacity during states of emergency, see §§ 47-5-701 et seq.

Mississippi Implied Consent Law, see §§ 63-11-1 et seq.

Restitution centers generally, see § 99-37-19.

JUDICIAL DECISIONS

1. In general.

Without waiving the procedural bar to the inmate's claim that his sentence was unconstitutional, the court held that the inmate was properly charged under Miss. Code Ann. § 97-9-45 and entered a plea of guilty to the escape; the sentence of three years was well within the maximum prescribed by the statute, which referred to prisoners sentenced to the Mississippi Department of Corrections and allowed a maximum sentence of five years, and thus the inmate was not entitled to post-conviction relief; although the inmate was in custody and on a work program for a county at the time of the escape, the inmate was considered under the Department's jurisdiction for purposes of § 97-9-45 because (1) the inmate's original burglary sentence required imprisonment in the "penitentiary" under Miss. Code Ann. § 97-17-23, which term meant any facility under the jurisdiction of the Department pursuant to Miss. Code Ann. § 47-5-3, (2) commitment to any institution within the jurisdiction of the Department was to the Department, not a particular institution pursuant to Miss. Code Ann. § 47-5-110, and (3) under Miss. Code Ann. § 47-5-541, the Department recommended rules concerning the participation of inmates in work programs. Gardner v. State, 848 So. 2d 900 (Miss. Ct. App. 2003).

Section 99-19-39, which governs the detention of a convict pending appeal, confers no right in a convicted felon to be incarcerated in county jail pending an appeal to the Supreme Court; construing § 99-19-39 to create such a right would place that statutory section in conflict with the provisions of § 47-5-1 et seq. which create a comprehensive correctional system to deal with the incarceration of all felony offenders; under the comprehensive legislative scheme setting up the Mississippi Department of Corrections, the circuit court sentences to the Department and not to any particular facility, and neither the circuit court nor the Supreme Court can order the Department to return a prisoner duly committed to its custody to county jail as a mater of right. Nicolaou v. State, 596 So. 2d 863 (Miss. 1992).

A prisoner did not have a protected liberty interest in being transferred from a county correctional facility to a state prison, absent a state law or regulation or prison policy or procedure conditioning such a transfer on proof of misbehavior or some other event. McFadden v. State, 580 So. 2d 1210 (Miss. 1991).

An imprisoned offender was improperly transferred from one institution to another institution within the same Department of Corrections, since such transfer was pursuant to an order of a Circuit Judge, and, pursuant to § 47-5-110, only the Commissioner of Corrections has the authority to assign or transfer offenders to particular institutions. Lewis v. State, 414 So. 2d 435 (Miss. 1982).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 18 et seq, 163 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 2, 17-20, 128, 129 et seq.

§ 47-5-110.1. Offenders to pay costs of requested transfers between facilities.

Whenever an offender in the custody of the Department of Corrections is transferred, upon request, from one (1) facility to another, the offender must pay to the department an amount equal to Forty Cents ($.40) per mile for each mile traveled from the transferor facility to the transferee facility or Twenty-five Dollars ($25.00), whichever is greater, to cover the costs of the transfer. An offender may not be required to pay for the costs of any transfer that is initiated by the Department of Corrections.

SOURCES: Laws, 2002, ch. 624, § 12; Laws, 2005, ch. 370, § 1, eff from and after passage (approved Mar. 15, 2005.)

§ 47-5-110.2. Persons sentenced to custody of department after January 1, 2017, can no longer be sentenced to regimented inmate discipline program.

From and after January 1, 2017, no person to be sentenced to the custody of the Mississippi Department of Corrections shall be ordered to a Regimented Inmate Discipline (RID) program by any court of this state. The Department of Corrections shall either operate RID programs for inmates sentenced to such a program prior to January 1, 2017, or devise and implement suitable alternatives for any such inmates.

SOURCES: Laws, 2015, ch. 463, § 1, eff from and after July 1, 2015.

§ 47-5-111. Transportation of offenders to correctional system facilities; processing of offenders at receiving stations.

The commissioner shall make suitable provision and regulations for the safe and speedy transportation of offenders from counties of their confinement to the appropriate facility of the correctional system by the sheriffs of such respective counties if such sheriffs are willing to perform such services as cheaply as the correctional system can have it done otherwise. Such transportation shall be on state account. In no instance shall the offenders be carried direct from the county jails to a correctional facility, but shall be carried to the appropriate receiving station as designated by the commissioner where the character of labor which each offender may reasonably perform shall be determined. Upon the arrival of each offender at such receiving station, the commissioner shall cause a statement to be made by the offender, giving a brief history of his life, and showing where he has resided, the names and post office addresses of his immediate relatives, and such other facts as will tend to show his past habits and character. The commissioner shall, by correspondence or otherwise, verify or disprove such statements, if practicable, and shall preserve the record and information so obtained for future reference. The commissioner shall have authority to designate such vehicles as are necessary to transport offenders.

SOURCES: Codes, 1942, § 7940; Laws, 1964, ch. 378, § 20; Laws, 1976, ch. 440, § 54; reenacted, Laws, 1981, ch. 465, § 58; reenacted, Laws, 1984, ch. 471, § 54; reenacted, Laws, 1986, ch. 413, § 54; Laws, 1988, ch. 504, § 24, eff from and after passage (approved May 6, 1988).

Cross References — "Biddle guard" to be installed on vehicle transporting prisoner, § 47-5-116.

Procedure for commitment of convict sentenced to penitentiary, see §§ 99-19-43 et seq.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 18, 163 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 20, 22, 130 et seq.

§ 47-5-112. Repealed.

Repealed by Laws of 1989, ch. 488, § 1, eff from and after July 1, 1991.

[Laws, 1977, ch. 479, § 8; Laws, 1978, ch. 447, § 1; Laws, 1979, ch. 372, § 1; reenacted, Laws, 1980, ch. 310; reenacted and amended, Laws, 1981, ch. 465, § 59; am, Laws, 1982, ch. 386; 1983, ch. 390; Laws, 1984, ch. 392; Laws, 1984, ch. 488, § 225; reenacted and amended, Laws, 1985, ch. 507; reenacted and amended, Laws, 1987, ch. 336; Laws, 1988, ch. 504, § 25; Laws, 1989, ch. 488, § 81]

Editor's Note — Former § 47-5-112 pertained to serving a sentence in a county jail.

§ 47-5-113. Offenders of the United States courts.

The offenders of the courts of the United States sentenced to confinement in the state correctional system shall on delivery to the correctional system be confined in the correctional system according to their several sentences and be treated as other offenders, the United States supporting such offenders and paying the expenses of executing their sentences.

SOURCES: Codes, 1942, § 7977; Laws, 1964, ch. 378, § 57; Laws, 1976, ch. 440, § 55; reenacted, Laws, 1981, ch. 465, § 60; reenacted, Laws, 1984, ch. 471, § 55; reenacted, Laws, 1986, ch. 413, § 55, eff from and after passage (approved March 28, 1986).

Cross References — Duty to receive prisoners from United States officers, see § 19-25-81.

§ 47-5-115. Offenders whose capital sentences are commuted.

Any offender who has been sentenced to suffer death, and whose sentence has been commuted by the Governor to imprisonment in the state correctional system, shall be confined in the state correctional system on order of the Governor and treated as are other offenders.

SOURCES: Codes, 1942, § 7976; Laws, 1964, ch. 378, § 56; Laws, 1976, ch. 440, § 56; reenacted, Laws, 1981, ch. 465, § 61; reenacted, Laws, 1984, ch. 471, § 56; reenacted, Laws, 1986, ch. 413, § 56, eff from and after passage (approved March 28, 1986).

Cross References — Constitutional authority for governor to grant reprieves, see Miss. Const. Art. 5, § 124.

Procedure upon violation of pardon, see § 99-19-29.

§ 47-5-116. Installation of "Biddle guard" on vehicle transporting prisoner.

(1) The term "Biddle guard" means a device or partition installed in a vehicle operated by a law enforcement officer which separates the front and rear passenger compartments.

(2) It is unlawful to transport a prisoner who is committed to the Department of Corrections in a vehicle which is not equipped with a secure Biddle guard. Each prisoner shall be restrained and a state, county, municipal or private correctional facility shall not release a prisoner into the custody of a law enforcement officer unless the prisoner is being transported in a vehicle equipped in accordance with this section.

(3) The Commissioner of Corrections, sheriff or chief law enforcement officer who is responsible for a vehicle in which any transportation in violation of this section occurs shall be assessed a civil penalty of One Thousand Five Hundred Dollars ($1,500.00) which shall be collected by the Attorney General and paid into the State Treasury.

(4) The Commissioner of Corrections, sheriff or chief law enforcement officer who is responsible for a vehicle in which a prisoner is transported in violation of this section shall not be liable personally for any damages arising from injuries to persons or property caused by a prisoner who has escaped while being transported in violation of this section.

(5) This section does not apply to any vehicle used by a correctional officer for transporting prisoners on the grounds of a correctional facility under the jurisdiction of the department, to any vehicle used by a field officer of the Department of Corrections when taking a prisoner into the custody of the Department of Corrections or to any vehicle used to transport prisoners in work release programs.

SOURCES: Laws, 1989, ch. 380, § 1; Laws, 1999, ch. 525, § 1, eff from and after July 1, 1999.

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Any prisoner committed to the Department of Corrections must be transported in a vehicle equipped with a Biddle guard; this section does not apply to prisoners who have not been committed to the Department of Corrections. Hunter, August 13, 1999, A.G. Op. #99-0395.

This section applies to the transportation of a prisoner for any reason with the exception of transporting prisoners on the grounds of a correctional facility under the jurisdiction of the department, to any vehicle used by a field officer of the Department of Corrections when taking a prisoner into the custody of the Department of Corrections or to any vehicle used to transport prisoners in work release programs. Hunter, August 13, 1999, A.G. Op. #99-0395.

§ 47-5-117. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1964, ch. 378, § 59]

Editor's Note — Former § 47-5-117 dealt with the numbering of prisoners.

§ 47-5-119. Initial search of offender; disposition of money found thereon; misappropriation of offender's money.

Offenders, when received into a facility of the correctional system, shall be carefully searched. If money be found on the person of the offender, or received by him at any time, it shall be taken in charge by the commissioner and placed to the offender's credit and expended for the offender's benefit on his written order and under such restrictions as may be prescribed by law or the rules. If an offender with money charged to his credit shall die from any cause while in a facility of the correctional system or be discharged without claiming such money, the commissioner shall make every effort to give notice of such fact to the discharged offender or to the beneficiary or nearest-known relative, if any, of the deceased or discharged offender, and upon a valid claim presented shall pay out such money to such discharged offender, beneficiary or nearest relative. After two (2) years from the date of giving such notice, or a valid attempt to give such notice, or two (2) years after the death of such offender, if the beneficiary or nearest relative is unknown, if such money has not been validly claimed, the commissioner shall make an affidavit of such fact, which sums shall escheat to the correctional system special vocational training program fund to help in offender rehabilitation. Any officer or employee having charge of the offenders' money who misappropriates the same, or any part thereof, shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the correctional system for a term of not more than five (5) years. All sums credited to the account of an offender who shall escape shall immediately, upon the offender's escape, escheat to the special vocational training program fund to help in offender rehabilitation.

SOURCES: Codes, 1942, § 7947; Laws, 1964, ch. 378, § 27; Laws, 1968, ch. 378, § 1; Laws, 1976, ch. 440, § 57; reenacted, Laws, 1981, ch. 465, § 62; reenacted, Laws, 1984, ch. 471, § 57; reenacted, Laws, 1986, ch. 413, § 57, eff from and after passage (approved March 28, 1986).

RESEARCH REFERENCES

ALR. Fourth Amendment as protecting prisoner against unreasonable searches or seizures. 32 A.L.R. Fed. 601.

§ 47-5-120. Transfer of offender for observation, diagnosis and treatment; board of examiners established to examine condition of certain offenders.

(1) Except as otherwise provided by law, the commissioner may transfer an offender for observation, diagnosis and treatment to another appropriate state department or institution, provided that he has given prior written notice to the administrator of the agency.

(2) The department of corrections shall create a board of examiners, hereinafter referred to as the "board," who shall examine and evaluate the condition of offenders who are apparently suffering from psychosis, other mental illness, or dependency or addiction to drugs. The commissioner shall refer such offenders to the board which shall make a written report of its findings pertaining to each such offender. If all members of the board determine that an offender is in need of mental treatment or can obtain benefit from the programs of treatment for drug dependency or addiction at a facility of the department of mental health, then the board may authorize his transfer for observation, diagnosis, treatment and rehabilitation after prior written notice to the administrator of the facility of the department of mental health that is to receive the offender.

(3) The board shall be composed of the following:

(a) A physician on the staff of the Mississippi State Hospital at Whitfield, Mississippi, or the East Mississippi State Hospital at Meridian, Mississippi;

(b) A physician on the staff of the Mississippi Department of Corrections; and

(c) A physician to be selected by the commissioner of corrections who is not an employee of the department of corrections or the department of mental health.

(4) The board shall meet once each month at the correctional facility located at Parchman, Mississippi. All fees, compensation and expenses of the board shall be paid from funds appropriated to or otherwise available to the state department of corrections. The board is authorized to establish such rules and regulations as may be necessary to carry out the purposes of this section.

(5) While the offender is in another institution, his sentence shall continue to run. When the director of the institution to which an offender has been transferred determines that the offender is not in need of treatment or has recovered from the condition which occasioned the transfer or has received the maximum benefit of treatment and rehabilitation, the commissioner shall provide for his return to the department, unless his sentence has expired, in which case he shall be issued a discharge in accordance with law.

SOURCES: Laws, 1976, ch. 440, § 17; Laws, 1977, ch. 495, § 2; reenacted, Laws, 1981, ch. 465, § 63; reenacted, Laws, 1984, ch. 471, § 58; reenacted, Laws, 1986, ch. 413, § 58, eff from and after passage (approved March 28, 1986).

Cross References — East Mississippi State Hospital, see § 41-17-3.

Commitment of persons in need of mental treatment generally, see §§ 41-21-61 et seq.

Participation in a drug identification program by a person on probation or parole, see §§ 47-5-601 et seq.

§ 47-5-121. Separation of sexes.

All female offenders shall be kept separate and apart from male offenders. Where practicable, the commissioner shall keep the female offenders within a separate facility from the male offenders, and shall provide reasonable rules and regulations for the government of same.

SOURCES: Codes, 1942, § 7943; Laws, 1964, ch. 378, § 23; Laws, 1976, ch. 440, § 58; reenacted, Laws, 1981, ch. 465, § 64; reenacted, Laws, 1984, ch. 471, § 59; reenacted, Laws, 1986, ch. 413, § 59, eff from and after passage (approved March 28, 1986).

Cross References — Constitutional authority for separation of sexes, see Miss. Const. Art. 10, § 225.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 31.

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 53.

§ 47-5-122. Agricultural production as part of disciplinary or other programs; contracts for federal subsidies.

The Commissioner of Corrections may provide for agricultural production in connection with disciplinary programs, rehabilitation, inmate work projects, prison agricultural enterprise programs or any similar activity of the department; however, agricultural activities shall be conducted in a manner which are labor intensive and a minimum amount of mechanized or power-driven equipment shall be utilized to the extent practical and economically feasible.

The Department of Corrections is authorized to enter into contracts or agreements with the federal government with respect to agricultural subsidies or payments.

SOURCES: Laws, 1986, ch. 425, § 2; Laws, 1992, ch. 506, § 5, eff from and after passage (approved May 15, 1992).

§ 47-5-123. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1964, ch. 378, §§ 25, 22]

Editor's Note — Former § 47-5-123 dealt with the clothing to be furnished as required outerwear for prisoners.

§ 47-5-124. Uniform designations for offenders; restrictions on possession of radios, televisions and similar electronic devices; restrictions on weight lifting programs.

(1) Beginning January 1, 1995, the Department of Corrections shall phase in the following uniform designations for all offenders housed by the Department of Corrections:

(a) Maximum security offenders — Red and white horizontal stripes which are three (3) inches wide;

(b) Medium security offenders — Black and white horizontal stripes which are three (3) inches wide; and

(c) Minimum security offenders — Green and white horizontal stripes which are three (3) inches wide.

No offender may wear any article of clothing that is not issued to the offender by the Department of Corrections. The word "convict" must be written on the back of the shirt or other upper outer garment of clothing.

(2) No convict incarcerated in a state correctional facility or a private correctional facility may be authorized or permitted to operate, use or have in his possession during the term of his incarceration any radio, television, record player, tape player, recorder, compact disc player, stereo or computer, except

when such devices are used in a work incentive program authorized and administered by the Department of Corrections. The department shall develop and implement a plan to return such devices owned by inmates to the families of such inmates.

(3) No state correctional facility existing on August 23, 1994, and no correctional facility, public or private, constructed or contracted for under the provisions of this chapter shall include weight lifting equipment, except when such equipment is used in a work incentive program.

(4) An inmate is prohibited from possessing individual air conditioners. However, the Department of Finance and Administration and Department of Corrections shall determine the feasibility and cost effectiveness of heating and refrigerated air conditioning equipment for the cooling and heating of a correctional facility constructed after August 23, 1994.

SOURCES: Laws, 1994 Ex Sess, ch. 26, § 28; Laws, 2015, ch. 463, § 4, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment deleted "or Regimented Inmate Discipline Program" preceding "authorized and administered by the Department of Corrections" in the next-to last sentence of (2); and deleted "or a Regimented Inmate Discipline program authorized and administered by the Department of Corrections" from the end of (3).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 113, 117, 118.

CJS. 72 C.J.S., Prisons and Rights of Prisoners § 68.

§ 47-5-125. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1964, ch. 378, §§ 25, 22]

Editor's Note — Former § 47-5-125 dealt with the diet to be furnished prisoners.

§ 47-5-126. Working of inmates.

All inmates, unless physically unable, shall be required to perform such work as may be set out in the policy-making board of the institution.

SOURCES: Laws, 1976, ch. 440, § 91; reenacted, Laws, 1981, ch. 465, § 65; reenacted, Laws, 1984, ch. 471, § 60; reenacted, Laws, 1986, ch. 413, § 60, eff from and after passage (approved March 28, 1986).

Cross References — Prohibition against use of offenders as servants, see § 47-5-137.

Regulations relating to penitentiary-made goods, see §§ 47-5-301 et seq.

JUDICIAL DECISIONS

1. In general.

A prison inmate does not have a protected liberty interest in a particular job assignment under the due process clause. However, a liberty interest may be created by state law or prison regulation. McFadden v. State, 580 So. 2d 1210 (Miss. 1991).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-127. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976.

[Laws, 1964, ch. 378, § 26; Laws, 1974, ch. 539, § 25; Laws, 1975, ch. 485, § 1]

Editor's Note — Former § 47-5-127 related to the working of prisoners, the deduction of overtime and Sunday work from their sentences, and the forfeiture of such deductions for misconduct.

§ 47-5-128. Repealed.

Repealed by Laws of 1984, ch. 420, § 3, eff from and after July 1, 1984.

[Laws, 1974, ch. 539, § 21; Laws, 1976, ch. 440, § 59; Laws, 1977, ch. 479, § 2; Laws, 1978, ch. 301, § 5; brought forward, Laws, 1981, ch. 465, § 66]

Editor's Note — Former § 47-5-128 pertained to assignment of offenders to farming operations and the employment of other labor.

§ 47-5-129. Offenders to work certain roads; Sunflower County.

Sunflower County shall have the use of not over thirty-five (35) offenders six (6) workdays of each week for the purpose of working the roads of Sunflower County. The board of supervisors of Sunflower County shall lay out and designate the roads to be worked by the offenders, and the board of supervisors shall furnish transportation to and from the Parchman facility for the offenders. The supervision and handling of offenders while working on the roads shall be under the road sergeant, it being understood that all offenders so worked on the road shall be returned to the Parchman facility at night.

SOURCES: Codes, 1942, § 7955; Laws, 1964, ch. 378, § 35; Laws, 1976, ch. 440, § 60; reenacted, Laws, 1981, ch. 465, § 67; reenacted, Laws, 1984, ch. 471, § 61; reenacted, Laws, 1986, ch. 413, § 61, eff from and after passage (approved March 28, 1986).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-131. Offenders to work certain roads; Quitman County.

Quitman County, Mississippi, shall have the use of not over twenty (20) offenders from the Parchman facility for five (5) workdays of each week for the purpose of working the roads of Quitman County. The board of supervisors of Quitman County shall lay out and designate roads to be worked by the offenders, and the board of supervisors shall furnish transportation to and from the Parchman facility for offenders.

SOURCES: Codes, 1942, § 7956; Laws, 1964, ch. 378, § 36; Laws, 1976, ch. 440, § 61; reenacted, Laws, 1981, ch. 465, § 68; reenacted, Laws, 1984, ch. 471, § 62; reenacted, Laws, 1986, ch. 413, § 62, eff from and after passage (approved March 28, 1986).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-132. Housing of prisoners; "hot racking," tents and "double bunking."

(1) In addition to any other powers and duties of the Commissioner of Corrections, the commissioner is authorized to study and develop a plan for rotating bed space, known in military terms as "hot racking," for adult offenders committed to the Department of Corrections. The plan, as determined by the commissioner, may include rotating shifts of labor, training and sleep.

(2) In addition, the commissioner may:

(a) In his discretion as he deems necessary to address emergency overcrowding situations, utilize military-style temporary housing facilities and infrastructure, for the incarceration of adult offenders committed to the department. Such facilities shall include tents or other temporary structures, any necessary ditches for drainage purposes, any temporary infrastructure and any other improvement or accompaniment to such structures. All such facilities shall be constructed as much as possible by adult offenders in the custody of the Department of Corrections, possessing the minimum constructions skills necessary.

(b) In his discretion, require that any bed in the state correctional system shall be converted to a bunk bed, in order that a space occupied by a bed will consist of a bed on top of a bed, which shall be known as "double-bunking."

SOURCES: Laws, 1994 Ex Sess, ch. 26, § 29, eff from and after passage (approved August 23, 1994).

§ 47-5-133. Drainage of correctional system property; restriction on working of offenders off correctional system property.

The commissioner is authorized and empowered to use the offenders on or off the property of the correctional system to drain or improve the drainage of any property belonging to the correctional system. Except as otherwise specifically provided by law, no offenders at any time are to work off property of the correctional system except: (a) when some dire calamity or disaster exists or threatens, or (b) those offenders assigned to duty at the Governor's Mansion (eight (8)). The Governor may order offenders to work to avert or control such calamity or disaster.

Provided, however, that the commissioner may authorize the working of offenders in support of any road construction, repair or other project of the State Highway Department upon proper request therefor by the State Highway Commission. In such cases the department shall establish all proper regulations for the working, guarding, safekeeping, clothing, housing and subsistence of offenders while so working.

Provided further, that the commissioner may authorize the working and housing of offenders in support of the Mississippi Bureau of Narcotics upon proper request therefor by the bureau. In such cases the department shall establish all proper regulations for the working, guarding, safekeeping, clothing, housing and subsistence of offenders while so working.

The commissioner may authorize the working of offenders in support of any aspect of Mississippi state government where such work would be appropriate and useful.

SOURCES: Codes, 1942, § 7964; Laws, 1964, ch. 378, § 44; Laws, 1976, ch. 440, § 62; reenacted, Laws, 1981, ch. 465, § 69; Laws, 1984, ch. 305, § 1; reenacted, Laws, 1984, ch. 471, § 63; reenacted, Laws, 1986, ch. 413, § 63; Laws, 1988, ch. 504, § 26; Laws, 1996, ch. 547, § 2, eff from and after passage (approved April 13, 1996).

Editor's Note — Section 65-1-1 provides that whenever the term "Mississippi State Highway Department," or the term "department" meaning the Mississippi State Highway Department, appears in the laws of this state, it shall mean the Mississippi Department of Transportation.

Section 65-1-1 provides that whenever the term "Mississippi State Highway Department," or the term "department" meaning the Mississippi State Highway Department, appears in the laws of this state, it shall mean the Mississippi Department of Transportation, and whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Bureau of Narcotics, see § 41-29-107 et seq.

Bureau of Narcotics work program, see § 41-29-110.

Use of inmates of correctional institutions on highway projects, see § 65-1-8.

JUDICIAL DECISIONS

1. In general.

Although § 47-5-133 appears to prohibit working prison inmate on private property, making inmate do such work and not paying inmate for such work does not violate inmate's constitutional or civil rights. Murray v. Mississippi Dep't of Cors., 911 F.2d 1167 (5th Cir. 1990), cert. denied, 498 U.S. 1050, 111 S. Ct. 760, 112 L. Ed. 2d 779 (1991).

RESEARCH REFERENCES

ALR. Application of Section 1 of 13th Amendment to United States Constitution, U.S. Const. Amend. XIII, 1, Prohibiting Slavery and Involuntary Servitude — Labor Required as Punishment for Crime. 87 A.L.R.6th 109.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-134. Offenders to work for Habitat for Humanity or the Fuller Center for Housing, Inc.

The Commissioner of Corrections may authorize the working of offenders, on a voluntary basis, in support of Habitat for Humanity, Inc., or the Fuller Center for Housing, Inc., which are nonprofit organizations. However, offenders shall only be used to work on construction projects. The Department of Corrections shall establish all proper regulations for the working, guarding, safekeeping, clothing, housing and subsistence of offenders when they are working.

SOURCES: Laws, 1997, ch. 365, § 1; Laws, 2009, ch. 428, § 1, eff from and after July 1, 2009.

§§ 47-5-135 and 47-5-136. Repealed.

Repealed by Laws, 1983, ch. 391, § 2, eff from and after March 24, 1983.

§ 47-5-135. [Codes, 1942, § 7981; Laws, 1964, ch. 378, § 64; Laws, 1976, ch. 440, § 64; reenacted, Laws, 1981, ch. 465, § 70]

§ 47-5-136. [Codes, 1942, § 7922(b-d); Laws, 1972, ch. 468, § 1; Laws, 1976, ch. 440, § 65; reenacted, Laws, 1981, ch. 465, § 71]

Editor's Note — Former § 47-5-135 directed the superintendent reduce the number of offenders at the insane hospital.

Former § 47-5-136 pertained to rehabilitation programs for drug offenders.

§ 47-5-137. Use of offenders as servants prohibited; exception.

Except as otherwise specifically provided by law, the use of offenders as servants, gardeners, chauffeurs, cooks, baby-sitters or domestic workers of any nature by an employee of the correctional system or by any other person in an individual household is hereby prohibited; provided, however, that the commissioner may use offenders for such work on the grounds of a facility of the correctional system.

SOURCES: Codes, 1942, § 7960; Laws, 1964, ch. 378, § 40; Laws, 1974, ch. 539, § 26; Laws, 1976, ch. 440, § 66; reenacted, Laws, 1981, ch. 465, § 72; reenacted, Laws, 1984, ch. 471, § 64; reenacted, Laws, 1986, ch. 413, § 64; Laws, 1996, ch. 547, § 3, eff from and after passage (approved April 13, 1996).

Cross References — Prisoners permitted to work on public roads or other public works, see § 47-1-9.

County prisoners may provide certain public service work, see § 47-1-19.

Working of municipal prisoners, see § 47-1-41.

Working of inmates, see § 47-5-126.

Use of prisoners in county jails to pick up trash, see §§ 47-5-43 et seq.

Use of prisoners in county jails to maintain certain historic cemeteries and serve food in conjunction with nonprofit organizations, see § 47-5-441.

JUDICIAL DECISIONS

1. In general.

A judge's use of county prisoners to carry out personal labors on his own behalf justified removal of the judge from office. In re Collins, 524 So. 2d 553 (Miss. 1987).

RESEARCH REFERENCES

ALR. Liability of public officer or body for harm done by prisoner permitted to escape. 44 A.L.R.3d 899.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-138. Earned time allowances; earned-release supervision; promulgations of rules and regulations; forfeiture generally; release of offender; phase-out of earned time release.

(1) The department may promulgate rules and regulations to carry out an earned time allowance program based on the good conduct and performance of an inmate. An inmate is eligible to receive an earned time allowance of one-half (½) of the period of confinement imposed by the court except those inmates excluded by law. When an inmate is committed to the custody of the department, the department shall determine a conditional earned time release date by subtracting the earned time allowance from an inmate's term of sentence. This subsection does not apply to any sentence imposed after June 30, 1995.

(2) An inmate may forfeit all or part of his earned time allowance for a serious violation of rules. No forfeiture of the earned time allowance shall be effective except upon approval of the commissioner, or his designee, and forfeited earned time may not be restored.

(3)(a) For the purposes of this subsection, "final order" means an order of a state or federal court that dismisses a lawsuit brought by an inmate while the inmate was in the custody of the Department of Corrections as frivolous, malicious or for failure to state a claim upon which relief could be granted.

(b) On receipt of a final order, the department shall forfeit:

(i) Sixty (60) days of an inmate's accrued earned time if the department has received one (1) final order as defined herein;

(ii) One hundred twenty (120) days of an inmate's accrued earned time if the department has received two (2) final orders as defined herein;

(iii) One hundred eighty (180) days of an inmate's accrued earned time if the department has received three (3) or more final orders as defined herein.

(c) The department may not restore earned time forfeited under this subsection.

(4) An inmate who meets the good conduct and performance requirements of the earned time allowance program may be released on his conditional earned time release date.

(5) For any sentence imposed after June 30, 1995, an inmate may receive an earned time allowance of four and one-half (4-½) days for each thirty (30) days served if the department determines that the inmate has complied with the good conduct and performance requirements of the earned time allowance program. The earned time allowance under this subsection shall not exceed fifteen percent (15%) of an inmate's term of sentence; however, beginning July 1, 2006, no person under the age of twenty-one (21) who has committed a nonviolent offense, and who is under the jurisdiction of the Department of Corrections, shall be subject to the fifteen percent (15%) limitation for earned time allowances as described in this subsection (5).

(6) Any inmate, who is released before the expiration of his term of sentence under this section, shall be placed under earned-release supervision until the expiration of the term of sentence. The inmate shall retain inmate status and remain under the jurisdiction of the department. The period of earned-release supervision shall be conducted in the same manner as a period of supervised parole. The department shall develop rules, terms and conditions for the earned-release supervision program. The commissioner shall designate the appropriate hearing officer within the department to conduct revocation hearings for inmates violating the conditions of earned-release supervision.

(7) If the earned-release supervision is revoked, the inmate shall serve the remainder of the sentence, but the time the inmate served on earned-release supervision before revocation, shall be applied to reduce his sentence.

SOURCES: Laws, 1977, ch. 479, § 6; brought forward, Laws, 1981, ch. 465, § 73; reenacted and amended, Laws, 1984, ch. 386; reenacted, Laws, 1984, ch. 471, § 65; Laws, 1985, ch. 531, § 2; reenacted, Laws, 1986, ch. 413, § 65; Laws, 1992, ch. 520, § 1; Laws, 1993, ch. 403, § 1; Laws, 1995, ch. 596, § 4; Laws, 1996, ch. 350, § 1; Laws, 1996, ch. 418, § 1; Laws, 1998, ch. 402, § 1; Laws, 2001, ch. 393, § 5; Laws, 2005, ch. 471, § 9; Laws, 2012, ch. 486, § 1;

brought forward and amended, Laws, 2014, ch. 457, § 72, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment brought the section forward and amended it with a minor stylistic change in (2).

Cross References — Handbook explaining earned time procedure, see § 47-5-140.

Meritorious earned time, see § 47-5-142.

Provision for notice to the sheriff of the county in which an offender was convicted prior to release of the offender from the custody of the Department of Corrections, see § 47-5-177.

Eligibility for earned time credit for inmates participating in joint state-county public service work programs, see § 47-5-413.

Earned time credit for inmates participating in joint state-county work program, see § 47-5-461.

Participation in a drug identification program by a person on probation or parole, see §§ 47-5-601 et seq.

Provisions relative to prison system overcrowding and the exercise of powers which tend to reduce prison system population or expand operating capacity during states of emergency, see §§ 47-5-701 et seq.

Utilization of powers which tend to reduce prison system population, including earned time allowances, prior to declaration of a prison system overcrowding state of emergency, see § 47-5-705.

Procedures for revocation of conditional advancement of parole eligibility date during period of prison overcrowding, see § 47-5-723.

Relationship between earned time allowances and advancement of parole eligibility dates during periods of prison overcrowding, see § 47-5-727.

JUDICIAL DECISIONS

1. In general.
2. Constitutionality.
3. Final order.
4. Early release.
5. Revocation.

1. In general.

As the allegations in an inmate's motion for postconviction relief were contradicted by his prior sworn statements, and his claims had no arguable basis in law or in fact and had no realistic chance for success, the postconviction court did not abuse its discretion in finding the motion frivolous and ordering the forfeiture of 60 days of his earned time under Miss. Code Ann. § 47-5-138. Bell v. State, 102 So. 3d 297 (Miss. Ct. App. 2012), writ of certiorari denied by 119 So. 3d 328, 2013 Miss. LEXIS 446 (Miss. 2013).

Circuit court did not abuse its discretion in deeming appellant's second post-conviction (PCR) motion frivolous and ordering the forfeiture of sixty days of his earned-time credit under Miss. Code Ann. § 47-5-138(3)(b)(i) because appellant entered a voluntary guilty plea, which waived his right to challenge the search warrant; the PCR motion offered nothing more than conclusory allegations framed as newly discovered evidence, and it had no realistic chance of success, was not premised upon an arguably sound basis in fact and law, and set forth no facts that would warrant relief. Russell v. State, 73 So. 3d 542 (Miss. Ct. App. 2011).

Miss. Code Ann. § 47-5-138 limits the maximum amount of earned time and meritorious earned time an offender could receive to one-half of his total sentence, but there is nothing in the statute that automatically entitles an offender to serve only fifty percent of his sentence. Hearron v. Miss. Dep't of Corr., 22 So. 3d 1238 (Miss. Ct. App. 2009).

Where defendant pled guilty to statutory rape, the trial court did not err by sentencing defendant to participate in the Mississippi Regimented Inmate Discipline Program program under its own discretion, and not under the earned-time allowance program administered by the

Mississippi DOC. Gatlin v. State, 18 So. 3d 290 (Miss. Ct. App. 2009).

Despite the fact that an inmate was entitled to an earned-time allowance of one-half of his total sentence, including mandatory time because he was convicted before the effective date of Miss. Code Ann. § 47-5-139(1)(e), the earned-time allowance did not reduce the mandatory portions of his sentences or accelerate his parole eligibility date under Miss. Code Ann. § 47-7-3(1) or his tentative discharge date. Adams v. Gibbs, 988 So. 2d 395 (Miss. Ct. App. 2008).

Trial judge unquestionably could consider both the civil file in defendant's post-conviction-relief proceedings and the entire record in the criminal proceedings, including the transcript of the guilty-plea hearing, in determining not only the issue of the merits of defendant's post-conviction-relief petition, but also the issue of whether the petition was frivolous for the purpose of considering sanctions; the trial judge did not abuse his discretion in sanctioning defendant via a forfeiture of sixty days of accrued earned time. Moore v. State, 986 So. 2d 928 (Miss. 2008).

Trial court did not err in ordering the Department of Corrections to forfeit 60 days of defendant's accrued earned time pursuant to Miss. Code Ann. § 47-5-138(3)(a) for filing a frivolous motion because defendant presented no argument that would enable him to prevail upon appeal. Waddell v. State, 999 So. 2d 375 (Miss. Ct. App. 2008).

Inmate's appeal was frivolous where the complaint never had a realistic chance of success, it failed to present an arguably sound basis in fact or law, and the inmate could not prove any set of facts that would warrant relief; the Mississippi department of corrections had to apply the provisions of Miss. Code Ann. § 47-5-138(3)(b)(i) regarding forfeiture of 60 days of the inmate's earned time release, if the inmate had any. Bessent v. Clark, 974 So. 2d 928 (Miss. Ct. App. 2007).

In a case involving a motion for post-conviction relief, there was no error in finding that the motion was frivolous since there was no newly discovered evidence in a case arising from a guilty plea in 2004, as defendant had claimed; therefore, the loss of earned time was appropriate. Coleman v. State, 971 So. 2d 637 (Miss. Ct. App. 2007), writ of certiorari denied by 2007 Miss. LEXIS 681 (Miss. Dec. 6, 2007), writ of certiorari denied by 2007 Miss. LEXIS 684 (Miss. Dec. 6, 2007), writ of certiorari denied by 973 So. 2d 244, 2007 Miss. LEXIS 686 (Miss. 2007).

Notwithstanding a time bar, a post-conviction claim failed on the merits because earned time and trusty time were not allowed for an escape conviction under Miss. Code Ann. § 47-5-139(3) since certain conditions were not met, and defendant was erroneously allowed to keep the time that was credited to his non-mandatory sentences; because defendant was convicted of violating a state statutory provision instead of a prison rule, he was not entitled to receive an administrative hearing and have the forfeiture of earned time approved. Golden v. Epps, 958 So. 2d 271 (Miss. Ct. App. 2007), writ of certiorari dismissed by 968 So. 2d 948, 2007 Miss. LEXIS 610 (Miss. 2007).

Defendant was not prejudiced by the imposition of a forfeiture of good time based on a meritless motion for post-conviction relief because he was not eligible for such as a habitual offender. Adams v. State, 962 So. 2d 640 (Miss. Ct. App. 2007).

Defendant's discontentment concerning the loss of good time credits was without merit; under Miss. Code Ann. § 47-5-138, the court may order forfeiture of good time credits upon a finding that the lawsuit was frivolous; the trial court ruled that the present suit was frivolous, and the appellate court would not disturb that finding as defendant's motion was procedurally barred. Smith v. State, 922 So. 2d 43 (Miss. Ct. App. 2006).

Order summarily dismissing petitioner's motion for post-conviction relief was upheld where, contrary to his allegations, there was no requirement in Miss. Code Ann. § 47-5-138 that there be an evidentiary hearing before a classification board prior to the loss of earned time; in his brief, petitioner did not address any of the specific instances in which his earned time was forfeited or show that any evidentiary hearing would have been beneficial. Stewart v. State, 938 So. 2d 344 (Miss. Ct. App. 2006).

As an inmate was sentenced after June 30, 1995, and was subject to the earned release supervision (ERS) that was present in Miss. Code Ann. § 47-5-138(5), the inmate's arguments that inmate's fifteen percent earned time allowance should not be spent on ERS was without merit and his complaint was properly dismissed. Peters v. State, 935 So. 2d 1064 (Miss. Ct. App. 2006), writ of certiorari denied by 936 So. 2d 367, 2006 Miss. LEXIS 400 (Miss. 2006), dismissed by 2009 U.S. Dist. LEXIS 70505 (N.D. Miss. Aug. 12, 2009).

Trial court did not err in applying the earned time forfeiture statute after the inmate's petition for post-conviction relief was denied as the present petition addressed issues that had previously been raised and resolved on appeal. Moore v. Miss. Dep't of Corr., 936 So. 2d 941 (Miss. Ct. App. 2005), writ of certiorari denied by 2006 Miss. LEXIS 560 (Miss. Aug. 24, 2006).

Appellate court affirmed the denial of an inmate's motion for post-conviction relief and his claim that he should have been released after serving seven and one-half years of his 15-year sentence, as it was clear that the Mississippi Department of Corrections (MDOC) had authority to revoke the inmate's earned time under Miss. Code Ann. § 47-5-138 for violating the internal rules of the MDOC. Sanders v. Miss. Dep't of Corr., 912 So. 2d 189 (Miss. Ct. App. 2005).

Trial court properly denied defendant's "motion to correct sentence" because applying Miss. Code Ann. § 47-5-138 to him was clearly impermissible under Miss. Code Ann. § 47-7-3, as he was an offender over 19 years of age and clearly ineligible for parole. Smith v. State, 914 So. 2d 330 (Miss. Ct. App. 2005).

Because the record did not support any finding of ineffectiveness of counsel, the claim upon which defendant's petition for post-conviction relief was based, but rather indicated that defendant understood all matters to which he pled and was satisfied with the performance of his attorney, it was within the trial court's discretion to order that defendant forfeit 60 days of earned time. Stanley v. State, 904 So. 2d 1127 (Miss. Ct. App. 2004).

There was no merit to petitioner's contention that, since he was not eligible to accrue earned time at the time of his attempted escape, during the mandatory portion of his sentence, he had no earned time to be forfeited; the escape attempt resulted in a forfeiture of all of petitioner's earned time credit. Boler v. Bailey, 840 So. 2d 734 (Miss. Ct. App. 2003).

In determining whether a case brought in forma pauperis should be dismissed as frivolous, the courts had a three-part test; did the complaint have a realistic chance of success, did it present an arguably sound basis in fact and law, and could the complainant prove any set of facts that would warrant relief. Dock v. State, 802 So. 2d 1051 (Miss. 2001).

An inmate could not accrue earned-time allowance in excess of 15 percent of his sentence, all prisoners were required to serve, at a minimum, 85 percent of their term of confinement. Hall v. State, 800 So. 2d 1202 (Miss. Ct. App. 2001).

Nothing in the earned time forfeiture provision prevents pro se inmates from seeking relief; the purpose of the statute is to reduce frivolous filings on the part of all incarcerated individuals, whether literate or illiterate, pro se or represented by counsel. Holt v. State, 757 So. 2d 1088 (Miss. Ct. App. 2000).

The trial court acted within appropriate boundaries when ordering that a certified copy of the final order dismissing a petition for post-conviction relief as frivolous be forwarded to the Mississippi Department of Corrections for action under subsection (3)(b), where the petitioner had previously petitioned the trial court for relief from sentence and other relief, and the same was deemed frivolous in a prior order, and he then filed his second petition with knowledge that his first petition had been deemed frivolous. Holt v. State, 757 So. 2d 1088 (Miss. Ct. App. 2000).

While forfeiture of time has become an additional option that a trial judge may exercise in imposing sanctions for frivolous motions, the trial judge may also impose monetary sanctions. Retherford v. State, 749 So. 2d 269 (Miss. Ct. App. 1999).

Statutory amendment that required that 85% of sentence be served and that eliminated opportunities for parole that had previously existed was an ex post facto law as applied to defendants who had been charged with crimes before effective date of statute and whose charges were not to be disposed of until after effective date. Puckett v. Abels, 684 So. 2d 671 (Miss. 1996).

A prisoner serving a 20-year sentence was not entitled to a deduction of earned time from his parole eligibility date since he did not become eligible for earned time until after the Attorney General issued an opinion discontinuing the practice of allowing earned time to shorten parole eligibility. McFadden v. State, 523 So. 2d 77 (Miss. 1988).

The actions of corrections officials in designating a prisoner eligible for earned time, due to an administrative or clerical error, and then in withdrawing that designation, did not amount to a forfeiture of earned time without due process since no earned time was accumulated by the prisoner. Doctor v. State, 522 So. 2d 229 (Miss. 1988).

Reasonable and harmonious construction of §§ 47-5-138, 47-5-139, and 47-7-3 is that legislature intended them to maintain enhanced penalty that § 99-19-81 imposes on habitual offenders, which penalty includes denial of certain privileges available to other prisoners. Perkins v. Cabana, 794 F.2d 168 (5th Cir. 1986), cert. denied, 479 U.S. 936, 107 S. Ct. 414, 93 L. Ed. 2d 366 (1986).

Defendant sentenced as habitual offender has no entitlement to credit for "good time." Hardy v. State, 473 So. 2d 941 (Miss. 1985).

2. Constitutionality.

This section is not unconstitutional, and does not violate the equal protection clause of the Fourteenth Amendment since neither prison inmates nor indigents constitute a suspect class entitled to heightened scrutiny under the equal protection clause. Tubwell v. Anderson, 776 So. 2d 654 (Miss. 2000).

The statute is not an unconstitutional ex post facto law, notwithstanding that it deprived the defendant of good time credits which he earned prior to the effective date of the statute, as the punitive measures required by the statute were applied to actions taken by the defendant after the effective date of the statute. Tubwell v. Anderson, 776 So. 2d 654 (Miss. 2000).

The defendant was not deprived of due process in connection with his forfeiture of good time credits as it was apparent that this section provides much greater procedural protections than those which are typically found in extra-judicial prison revocation proceedings in that it only provides for a revocation of good time credits in the event that a "final order" is issued dismissing the prisoner's lawsuit. Tubwell v. Anderson, 776 So. 2d 654 (Miss. 2000).

This section is not rendered unconstitutional by the fact that it does not contain a provision granting inmates a right to counsel in appealing a revocation of good time credits under the statute as there is no right of counsel for appeals from inmate lawsuits which have been dismissed as frivolous. Tubwell v. Anderson, 776 So. 2d 654 (Miss. 2000).

The statute is not rendered unconstitutional by the fact that it does not contain a provision for an inmate to file an in forma pauperis appeal from a ruling ordering the forfeiture of a prisoner's earned good time credits since there is no constitutional right to appeal in forma pauperis from inmate lawsuits which have been dismissed as frivolous. Tubwell v. Anderson, 776 So. 2d 654 (Miss. 2000).

3. Final order.

The orders dismissing an inmate's lawsuits were final orders within the meaning of the statute where, in each of the orders, the trial court dismissed the lawsuit and expressly found that the suit was frivolous. Tubwell v. Anderson, 776 So. 2d 654 (Miss. 2000).

Based on the supreme court's previous stern admonition to defendant and pursuant to Miss. Code Ann. § 47-5-138(3)(a), the appellate court's mandate was a "final order" that dismissed a lawsuit brought by an inmate while the inmate was in the custody of the Department of Corrections as frivolous, malicious or for failure to state a claim upon which relief could be granted, and the Mississippi Department of Corrections was directed and ordered that an additional 60, for a total of 120 days of accrued earned time would be forfeited by defendant. Roland v. State, 939 So. 2d 810 (Miss. Ct. App. 2006).

4. Early release.

Where appellant served 1,077 days in prison on his four-year sentence for the sale of cocaine, he was released on earned-release supervision under Miss. Code Ann. § 47-5-138. The discharge certificate from the Mississippi Department of Corrections reflected that appellant had served his four-year sentence. Branch v. State, 996 So. 2d 829 (Miss. Ct. App. 2008).

5. Revocation.

Although an inmate was a candidate for sanctions under Miss. Code Ann. § 47-5-138(3)(a) and (b) for filing successive, frivolous motions for post-conviction relief, such sanctions would have no effect because he had been sentenced as a habitual offender under Miss. Code Ann. § 99-19-81, and thus had no earned time to forfeit. Clay v. State, — So. 2d —, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. Apr. 2, 2013), writ of certiorari dismissed by 2013 Miss. LEXIS 651 (Miss. Dec. 12, 2013).

Denial of defendant's motion for post-conviction relief, in which defendant challenged the revocation of his earned-release supervision (ERS), pursuant to Miss. Code Ann. § 47-5-138(2), was clearly erroneous because defendant was never indicted for the conduct upon which the revocation was based, and at the revocation hearing, the State did not present evidence to prove defendant had violated an ERS rule and did not dispute any evidence that defendant had acted in self-defense. Morris v. State, 66 So. 3d 716 (Miss. Ct. App. June 28, 2011).

ATTORNEY GENERAL OPINIONS

Earned time may only be forfeited if an inmate commits a violation felonious in nature or in the event of escape. Lucas, June 22, 1992, A.G. Op. #92-0443.

The Department of Corrections does not have the authority to award earned time to a defendant for time that was served in a municipal or county jail while awaiting trial. Anderson, July 10, 1998, A.G. Op. #98-0350.

RESEARCH REFERENCES

ALR. Withdrawal, forfeiture, modification, or denial of good-time allowance to prisoner. 95 A.L.R.2d 1265.

Defendant's Right to Credit for Time Spent in Halfway House, Rehabilitation Center, or Similar Restrictive Environment as Condition of Pretrial Release. 46 A.L.R.6th 63.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 218-231.

22 Am. Jur. Trials 1, Prisoners' Rights Litigation.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 142-144, 146, 152.

§ 47-5-138.1. Trusties authorized to accumulate additional earned time; certain offenders in trusty status ineligible for time allowance.

(1) In addition to any other administrative reduction of sentence, an offender in trusty status as defined by the classification board of the Department of Corrections may be awarded a trusty-time allowance of thirty (30) days' reduction of sentence for each thirty (30) days of participation during any calendar month in an approved program while in trusty status, including satisfactory participation in education or instructional programs, satisfactory

participation in work projects and satisfactory participation in any special incentive program.

(2) An offender in trusty status shall not be eligible for a reduction of sentence under this section if:

(a) The offender was sentenced to life imprisonment;

(b) The offender was convicted as an habitual offender under Sections 99-19-81 through 99-19-87;

(c) The offender was convicted of a sex crime;

(d) The offender has not served the mandatory time required for parole eligibility, as prescribed under Section 47-7-3, for a conviction of robbery or attempted robbery through the display of a deadly weapon, carjacking through the display of a deadly weapon or a drive-by shooting; or

(e) The offender was convicted of trafficking in controlled substances under Section 41-29-139.

SOURCES: Laws, 1999, ch. 515, § 1; Laws, 2001, ch. 393, § 6; Laws, 2001, ch. 478, § 1; Laws, 2004, ch. 456, § 1; Laws, 2010, ch. 470, § 2; Laws, 2014, ch. 457, § 41, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 6 of ch. 393 Laws of 2001, effective from and after July 1, 2001 (approved March 12, 2001), amended this section. Section 1 of ch. 478, Laws of 2001, effective July 1, 2001 (approved March 23, 2001), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 478, Laws of 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2014 amendment deleted former (2)(e) which read: "The offender was convicted of possession with the intent to deliver or sell a controlled substance under Section 41-29-139; or"; and redesigned the remaining subsection accordingly; and made minor stylistic changes throughout.

JUDICIAL DECISIONS

1. In general; construction.
2. Constitutionality.

1. In general; construction.

Notwithstanding a time bar, a post-conviction claim failed on the merits because earned time and trusty time were not allowed for an escape conviction under Miss. Code Ann. § 47-5-139(3) since certain conditions were not met, and defendant was erroneously allowed to keep the time that was credited to his non-mandatory sentences; because defendant was convicted of violating a state statutory provision instead of a prison rule, he was not entitled to receive an administrative hearing and have the forfeiture of earned time approved. Golden v. Epps, 958 So. 2d 271 (Miss. Ct. App. 2007), writ of certiorari dismissed by 968 So. 2d 948, 2007 Miss. LEXIS 610 (Miss. 2007).

Defendant, who was convicted of armed robbery, was not allowed to accrue earned-time credits because the sentence for armed robbery was a mandatory day for day sentence, and defendant was not eligible for parole. Wells v. State, 936 So. 2d 479 (Miss. Ct. App. 2006).

Because the inmate began serving his mandatory sentences as an habitual offender, totaling six years, on September 29, 2000, he would be serving them until September 29, 2006; and therefore, he remained ineligible for trusty status.

Snow v. Johnson, 913 So. 2d 334 (Miss. Ct. App. 2005).

Both defendant and the Mississippi Attorney General's Office agreed that defendant's parole and release dates were incorrectly calculated as to the date his sentence began and credits and trusty time. Thus, the appellate court reversed the determination that defendant was not entitled to a hearing and remanded the matter to the Mississippi Parole Board to allow the Board to make the exact calculations of defendant's parole and release dates; however, on remand, the Board was free to grant or deny defendant's petition for parole and the circuit court had no authority to determine defendant's parole eligibility. Lizana v. Scott, 910 So. 2d 31 (Miss. Ct. App. 2005).

There was no merit to petitioner's contention that, since he was not eligible to accrue earned time at the time of his attempted escape during the mandatory portion of his sentence, he had no earned time to be forfeited; the escape attempt resulted in a forfeiture of all of petitioner's earned time credit. Boler v. Bailey, 840 So. 2d 734 (Miss. Ct. App. 2003).

Proper interpretation of Miss. Code Ann. §§ 47-5-138.1, 47-5-139, was that the prisoner was ineligible for earned time allowance on the habitual and mandatory portion of the prisoner's sentences. Hill v. State, 838 So. 2d 994 (Miss. Ct. App. 2002).

2. Constitutionality.

Trial court erred in summarily dismissing an inmate's petition seeking trusty status; since the record lacked sufficient factual findings to determine whether the application of Miss. Code Ann. § 47-5-138.1 to the inmate constituted an ex post facto violation, resolution of this issue required an evidentiary hearing. Horton v. Epps, 20 So. 3d 24 (Miss. Ct. App. 2009).

Trial court erred in summarily dismissing a prisoner's motion for postconviction relief; an evidentiary hearing was necessary to decide whether application of the amended version of Miss. Code Ann. § 47-5-138.1 to the prisoner, who had pleaded guilty to the crime of sale and transfer of cocaine, constituted an ex post facto violation. Gray v. State, 13 So. 3d 283 (Miss. Ct. App. 2008), writ of certiorari denied by 2009 Miss. LEXIS 344 (Miss. July 23, 2009).

The amendment to Miss. Code Ann. § 47-5-138.1 was not an ex post facto law; even though the amended statute held that an offender was not eligible for trusty status if the offender was convicted of trafficking in controlled substances, defendant continued to receive the 10 days for 30 days time benefit under the prior statute. Ross v. Epps, 922 So. 2d 847 (Miss. Ct. App. 2006).

§ 47-5-139. Certain inmates ineligible for earned time allowance; commutation to be based on total term of sentences; forfeiture of earned time in event of escape.

(1) An inmate shall not be eligible for the earned time allowance if:

(a) The inmate was sentenced to life imprisonment; but an inmate, except an inmate sentenced to life imprisonment for capital murder, who has reached the age of sixty-five (65) or older and who has served at least fifteen (15) years may petition the sentencing court for conditional release;

(b) The inmate was convicted as a habitual offender under Sections 99-19-81 through 99-19-87;

(c) The inmate has forfeited his earned time allowance by order of the commissioner;

(d) The inmate was convicted of a sex crime; or

(e) The inmate has not served the mandatory time required for parole eligibility for a conviction of robbery or attempted robbery with a deadly weapon.

(2) An offender under two (2) or more consecutive sentences shall be allowed commutation based upon the total term of the sentences.

(3) All earned time shall be forfeited by the inmate in the event of escape and/or aiding and abetting an escape. The commissioner may restore all or part of the earned time if the escapee returns to the institution voluntarily, without expense to the state, and without act of violence while a fugitive from the facility.

(4) Any officer or employee who shall willfully violate the provisions of this section and be convicted therefor shall be removed from office or employment.

SOURCES: Codes, 1942, § 7944; Laws, 1964, ch. 378, § 24; Laws, 1971, ch. 524, § 12; Laws, 1973, ch. 357, § 1; Laws, 1974, ch. 539, § 29; Laws, 1975, ch. 485, §§ 2, 5; Laws, 1976, ch. 389; Laws, 1976, ch. 440, § 67; Laws, 1977, ch. 479, § 3; reenacted, Laws, 1981, ch. 465, § 74; Laws, 1981, ch. 502, § 10; Laws, 1982, ch. 431, § 2; reenacted, Laws, 1984, ch. 471, § 66; reenacted, Laws, 1986, ch. 413, § 66; Laws, 1992, ch. 520, § 2; Laws, 1994 Ex Sess, ch. 25, § 6; Laws, 1995, ch. 596, § 5, eff from and after June 30, 1995.

Cross References — Penalty of life imprisonment without parole for sale of specified quantities of certain drugs, see § 41-29-139.

Classification committee, see §§ 47-5-99 et seq.

Proceedings before classification committee on demotion of offenders or forfeiture of earned time, see § 47-5-104.

Handbook explaining earned time procedure, see § 47-5-140.

Meritorious earned time, see § 47-5-142.

Eligibility for earned time credit for inmates participating in joint state-county public service work programs, see § 47-5-413.

Earned time credit for inmates participating in joint state-county work program, see § 47-5-461.

Utilization of powers which tend to reduce prison system population, including earned time allowances, prior to declaration of a prison system overcrowding state of emergency, see § 47-5-705.

Procedures for revocation of conditional advancement of parole eligibility date during period of prison overcrowding, see § 47-5-723.

Relationship between earned time allowances and advancement of parole eligibility dates during periods of prison overcrowding, see § 47-5-727.

JUDICIAL DECISIONS

1. In general; construction.
2. Constitutional issues.
3. Multiple sentences.
4. Eligibility for release.
5. Changes in regulation or in interpretation of regulation.
6. Conditional release.
7. Miscellaneous.

1. In general; construction.

Notwithstanding a time bar, a post-conviction claim failed on the merits because earned time and trusty time were not allowed for an escape conviction under Miss. Code Ann. § 47-5-139(3) since certain conditions were not met, and defendant was erroneously allowed to keep the time that was credited to his non-mandatory sentences; because defendant was convicted of violating a state statutory provision instead of a prison rule, he was not entitled to receive an administrative hearing and have the forfeiture of earned time approved. Golden v. Epps, 958 So. 2d 271 (Miss. Ct. App. 2007), writ of certiorari dismissed by 968 So. 2d 948, 2007 Miss. LEXIS 610 (Miss. 2007).

Defendant was not entitled to parole consideration on a rape conviction based on the fact that defendant was 19 when the offense was committed because the former Miss. Code Ann. § 47-7-3 allowed parole consideration only in cases where the defendant was convicted of statutory rape; former Miss. Code Ann. § 47-5-139 precluded good time credit for any sex offense. Braziel v. Bailey, 835 So. 2d 962 (Miss. Ct. App. Jan. 28, 2003).

There was no merit to petitioner's contention that, since he was not eligible to accrue earned time at the time of his attempted escape during the mandatory portion of his sentence, he had no earned time to be forfeited; the escape attempt resulted in a forfeiture of all of petitioner's earned time credit. Boler v. Bailey, 840 So. 2d 734 (Miss. Ct. App. 2003).

Proper interpretation of Miss. Code Ann. §§ 47-5-138.1, 47-5-139, was that the prisoner was ineligible for earned time allowance on the habitual and mandatory portion of the prisoner's sentences. Hill v. State, 838 So. 2d 994 (Miss. Ct. App. 2002).

A prisoner may not earn, but not use, good time during service of a mandatory portion of his period of confinement and later use that good time earned upon expiration of the mandatory portion of his sentence. Wilson v. Puckett, 721 So. 2d 1110 (Miss. 1998).

A defendant convicted of armed robbery was not eligible to reduce his sentence with the grant of administrative good time, pursuant to § 47-5-139, since earned time for good conduct and performance only applies to inmates who are eligible for parole, and defendant was not entitled to parole under § 47-7-3, which required him to serve his full 10-year sentence. Cooper v. State, 439 So. 2d 1277 (Miss. 1983).

2. Constitutional issues.

Where a juvenile convicted of murder receives a life sentence, conditional release does not satisfy the mandate of Miller v. Alabama, 2012 U.S. LEXIS 4873, because conditional release is more akin to clemency, which is different from parole despite some surface similarities, and conditional release would not be determined by the sentencing authority at the time of sentencing based on age and other characteristics, as Miller mandates. Parker v. State, 119 So. 3d 987 (Miss. 2013).

Defendant, convicted of murder, argued that because of his age, under Miss. Code Ann. § 47-5-139(1)(a) he was subjected to greater punishment for his crime than others sentenced to life imprisonment at age 50 or older; the appellate court rejected his argument that the age distinction in the statute subjected a younger individual to a longer punishment that was cruel and unusual, since his life sentence fell within the statutory limits designated by the Mississippi Legislature. Knox v. State, 912 So. 2d 1004 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 686 (Miss. 2005).

Inmate's petition arguing that the Mississippi Department of Corrections illegally took his earned time allowance away from him was properly dismissed for failure to state a claim. The inmate claims of due process/ex post facto violations were fatally flawed as had not legally acquired any earned time allowances because he was not eligible for earn time allowances on the mandatory portion of his sentences for armed robbery, pursuant to Miss. Code Ann. § 47-5-139(1)(e). Adams v. Epps, 900 So. 2d 1210 (Miss. Ct. App. 2005), writ of certiorari dismissed by 901 So. 2d 1273, 2005 Miss. LEXIS 291 (Miss. 2005).

Defendant's sentence of life imprisonment for murder conviction was upheld because Miss. Code Ann. § 47-5-139(1)(a) was not violative of defendant's due process and equal protection rights by specifying criteria to consider in determining which inmates could or could not be considered for earned time allowance. Martin v. State, 871 So. 2d 693 (Miss. 2004).

Denial of credit for time served in jail and of "good time" to person convicted of felony who appeals judgment of conviction and who remains in jail pending disposition of appeal due to inability to make bond, while allowing credit for time served in jail and award of "good time" to convicted felons serving sentence in county jail without appealing conviction is denial of equal protection, contrary to Fourteenth Amendment. Lacy v. State, 468 So. 2d 63 (Miss. 1985).

A defendant convicted of armed robbery after 1977 and sentenced to serve less than 10 years in the penitentiary, and who was therefore not eligible for parole pursuant to § 47-7-3, was not subjected to enforcement of an ex post facto law by a policy of the Department of Corrections administratively barring him from earning good time after January, 1981, although good time earned prior to that date was not taken away, notwithstanding the provisions of § 47-5-139, since the statutory provisions regarding good time remained unchanged, and since administrative interpretation of a clearly worded statute is not a "law" within the scope and contemplation of the ex post facto clauses of the federal and state Constitutions. Tiller v. State, 440 So. 2d 1001 (Miss. 1983).

3. Multiple sentences.

A defendant who was sentenced to 10 years imprisonment for armed robbery and 15 years imprisonment for manslaughter to run consecutively, would be eligible for parole on March 30, 1993, where he began the service of his 10-year armed robbery sentence on the date of his initial arrest pursuant to § 99-19-23, he was legally released from that sentence 10 years later on February 5, 1990 but remained held under the 15-year manslaughter sentence, and he earned substantial meritorious earned time; although he would ordinarily have been required to serve at least ¼ of the manslaughter sentence-3 years and 9 months-before he became eligible for parole, his earned time advanced his earliest parole eligibility date by approximately 7 months. Milam v. State, 578 So. 2d 272 (Miss. 1991).

Reasonable and harmonious construction of §§ 47-5-138, 47-5-139, and 47-7-3 is that legislature intended them to maintain enhanced penalty that § 99-19-81 imposes on habitual offenders, which penalty includes denial of certain privileges available to other prisoners. Perkins v. Cabana, 794 F.2d 168 (5th Cir. 1986), cert. denied, 479 U.S. 936, 107 S. Ct. 414, 93 L. Ed. 2d 366 (1986).

Under the requirement of § 47-7-3 that a person under a life sentence becomes eligible for parole after ten years, a prisoner serving three consecutive life terms would not be eligible for parole until he had served at least ten years of each life sentence less 30 percent of earned good time, since § 47-5-139(3) mandates the mathematical process of multiplying the number of life sentences imposed upon the prisoner by ten years to determine the date upon which the prisoner would become eligible for parole. Davis v. State, 429 So. 2d 262 (Miss. 1983).

4. Eligibility for release.

Inmate did not receive ineffective assistance of counsel as: (1) the plea petition, the guilty-plea colloquy, and the post-conviction relief evidentiary hearing, taken together, reflected that defense counsel correctly advised the inmate of the life sentence for murder, his potential for release at age 65, and the correct sentencing statutory provision, Miss. Code Ann. § 47-7-3(1)(f), which prohibited parole eligibility because the inmate pled guilty to murder and was sentenced to life imprisonment; (2) the inmate had the potential for release Miss. Code Ann. § 47-5-139(1)(a) at age 65 after serving 15 years by petitioning for early release at or after age 65; (3) the inmate was 36 years old at the time of his guilty plea and sentence; (4) upon reaching age 65, the inmate would have served substantially more than 15 years; and (5) the inmate admitted being advised of his eligibility to be released at age 65. Higginbotham v. State, 114 So. 3d 9 (Miss. Ct. App. 2012), writ of certiorari denied by 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

5. Changes in regulation or in interpretation of regulation.

Defendant who enters plea of guilty to charge of armed robbery pursuant to plea bargain agreement in reliance upon erroneous advice of attorney that defendant will be eligible for earned good time and will be subject to release after serving 7 years of sentence is entitled to vacation of guilty plea and reinstatement of innocent plea when Mississippi Department of Corrections changes administrative policy to comply with §§ 47-5-139, 47-7-3, thereby requiring that defendant serve minimum of 10 years. Coleman v. State, 483 So. 2d 680 (Miss. 1986).

A petitioner who enters a guilty plea to armed robbery pursuant to plea bargain agreement upon erroneous advice of counsel that petitioner will be eligible for earned good time and will be subject to release after serving 7 years of sentence is not subjected to ex post facto law when Mississippi Department of Corrections changes administrative policy to comply with §§ 47-5-139 and 47-7-3, causing petitioner to serve minimum of 10 years. Coleman v. State, 483 So. 2d 680 (Miss. 1986).

A defendant convicted of armed robbery after 1977 and sentenced to serve less than 10 years in the penitentiary, and who was therefore not eligible for parole pursuant to § 47-7-3, was not subjected to enforcement of an ex post facto law by a policy of the Department of Corrections administratively barring him from earning good time after January, 1981, although good time earned prior to that date was not taken away, notwithstanding the provisions of § 47-5-139, since the statutory provisions regarding good time remained unchanged, and since administrative interpretation of a clearly worded statute is not a "law" within the scope and contemplation of the ex post facto clauses of the federal and state Constitutions. Tiller v. State, 440 So. 2d 1001 (Miss. 1983).

6. Conditional release.

Miss. Code Ann. § 97-3-21 was not unconstitutionally vague and did not apply to the inmate where the inmate confused parole with conditional release as: (1) Miss. Code Ann. § 47-7-3(1)(f) prohibited parole for an inmate sentenced to life under Miss. Code Ann. § 99-19-101 for capital offenses; (2) since the inmate pled guilty to murder, carrying a life sentence, he was convicted of an other capital offense under Miss. Code Ann. § 1-3-4; and (3) the inmate was eligible to petition for conditional release at age 65 under Miss. Code Ann. § 47-5-139(1)(a). Higginbotham v. State, 114 So. 3d 9 (Miss. Ct. App. 2012), writ of certiorari denied by 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

Defendant's guilty plea to murder under Miss. Code Ann. § 97-3-19(1)(a) was knowing, voluntary, and intelligent as defense counsel correctly advised the inmate that when he reached the 65, he could petition to be released from custody under Miss. Code Ann. § 47-5-139(1)(a); while counsel might have used the term "parole eligibility" rather than the correct term "conditional release," he correctly advised the inmate that he would be eligible for release at age 65. Higginbotham v. State, 114 So. 3d 9 (Miss. Ct. App. 2012), writ of certiorari denied by 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

7. Miscellaneous.

Trial court did not err in dismissing an inmate's petition alleging that the Mississippi Department of Corrections improperly computed his discharge date and that he had to be released from prison because the inmate was not entitled to any earned-time credit, and his time had been properly computed; because Miss. Code Ann. § 99-19-81 clearly stated that a habitual offender's sentence would not be reduced, the inmate was required to serve the maximum term of imprisonment for his crime of aggravated assault of a law enforcement officer, which was thirty years' imprisonment, Miss. Code Ann. § 97-3-7(2), and was the sentence that the inmate received. Lee v. Kelly, 34 So. 3d 1203 (Miss. Ct. App. 2010).

In a post-conviction relief case in which a pro se inmate had pled guilty to armed robbery, he argued unsuccessfully that constitutional rights were violated because he was sentenced to serve a mandatory 10-year sentence without the benefit of earned time. Pursuant to Miss. Code Ann. § 47-5-139(1)(e), an inmate was not eligible for earned-time credit when the inmate had not served the mandatory time required for parole eligibility for a conviction of robbery or attempted robbery with a deadly weapon, and, pursuant to Miss. Code Ann. § 47-7-3(1)(d)(ii) (now 47-7-3(1)(c)(ii)), he was not eligible for parole since he had been convicted of armed robbery after October 1, 1994. Diggs v. State, 46 So. 3d 361 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 636, 2010 Miss. LEXIS 561 (Miss. 2010).

Despite the fact that an inmate was entitled to an earned-time allowance of one-half of his total sentence, including mandatory time because he was convicted before the effective date of Miss. Code Ann. § 47-5-139(1)(e), the earned-time allowance did not reduce the mandatory portions of his sentences or accelerate his parole eligibility date under Miss. Code Ann. § 47-7-3(1) or his tentative discharge date. Adams v. Gibbs, 988 So. 2d 395 (Miss. Ct. App. 2008).

Although appellant argued that the trial court failed to inform him that he would be eligible for earned time pursuant to Miss. Code Ann. § 47-5-139(1) only after serving 10 years of his sentence, because appellant was convicted after October 1, 1994, appellant was not eligible for parole pursuant to Miss. Code Ann. § 47-7-3(d)(ii) (now 47-7-3(1)(c)(ii)). Since appellant was not eligible for parole, appellant was precluded from accumulating earned time pursuant to § 47-5-139(1)(e). Robinson v. State, 4 So. 3d 361 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 112 (Miss. 2009).

Post-conviction relief was properly denied in an armed robbery case because a trial court correctly stated that, due to the nature of the charges, defendant was not eligible for parole, and he had to serve his entire 30-year sentence; defendant was not eligible under Miss. Code Ann. § 47-5-139 until the mandatory portion of his sentence had been served. Robinson v. State, 964 So. 2d 609 (Miss. Ct. App. 2007).

Appellant was not entitled to earned time credit under Miss. Code Ann. § 47-5-139(1)(e) where appellant had not served the mandatory time required for parole eligibility for a conviction of armed robbery; appellant had to serve the entire sentence under Miss. Code Ann. § 47-7-3(1)(d)(ii). Sykes v. Epps, 963 So. 2d 31 (Miss. Ct. App. 2007).

Pursuant to Miss. Code Ann. § 47-5-139(1)(e), an inmate was not entitled to receive earned time until he had served the mandatory portion of sentence; the inmate was not entitled to receive eighteen-and-one-half years earned time, and any calculation that the Mississippi Department of Correction (MDOC) mistakenly gave did not change that fact; the incorrect sentence computation given to the inmate did not operate to increase his earned time, which had been properly calculated by MDOC as thirteen-and-one-half years. Guy v. Box, 925 So. 2d 139 (Miss. Ct. App. 2006).

Defendant, who was convicted of armed robbery, was not allowed to accrue earned-time credits because the sentence for armed robbery was a mandatory day for day sentence, and defendant was not eligible for parole. Wells v. State, 936 So. 2d 479 (Miss. Ct. App. 2006).

Although the inmate argued that Miss. Code Ann. § 47-5-139 should be interpreted to allow his non-mandatory sentences to run concurrently with his mandatory sentences, thus entitling him to be released from prison; the appellate court was unable to grant such relief where the Mississippi Department of Corrections (MDOC) had to be allowed to interpret its statutes in a manner that allowed the Mississippi Parole Board to impose an enhanced penalty for habitual offenders, and MDOC's interpretation of Miss. Code Ann. § 99-19-21 as it applied to subsequent mandatory sentences was correct. Snow v. Johnson, 913 So. 2d 334 (Miss. Ct. App. 2005).

A prisoner was not permitted to earn, but not use, good time credit during service of the mandatory portion of his period of confinement and then use that good time earned upon expiration of the mandatory portion of the sentence. Williams v. Puckett, 624 So. 2d 496 (Miss. 1993).

The district court's findings as to the illegality of the disciplinary procedures at the Mississippi State Penitentiary, and the relief therein granted, were affirmed. Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974).

RESEARCH REFERENCES

ALR. Withdrawal, forfeiture, modification, or denial of good-time allowance to prisoner. 95 A.L.R.2d 1265.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 218-231.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 142-144, 146, 152.

§ 47-5-140. Earned time handbook.

Each county attorney, district attorney, each member of the Parole Board and circuit judge shall be provided a copy of a handbook prepared by the commissioner which shall include a copy of Section 47-5-138 and Section 47-5-139, and shall clearly show how such sections would apply to an offender sentenced to terms of various lengths. Each offender shall be provided a copy of the handbook upon arrival at the correctional system and have it explained to him as a part of his initial orientation.

SOURCES: Laws, 1975, ch. 485, § 4; Laws, 1976, ch. 440, § 68; reenacted, Laws, 1981, ch. 465, § 75; reenacted, Laws, 1984, ch. 471, § 67; reenacted, Laws, 1986, ch. 413, § 67; Laws, 1992, ch. 520, § 3, eff from and after passage (approved May 14, 1992).

Cross References — Earned time for good conduct, see §§ 47-5-138, 47-5-139.
Trusties authorized to accumulate additional earned time, see § 47-5-138.1.

§ 47-5-141. Repealed.

Repealed by Laws, 1983, ch. 391, § 2, eff from and after March 24, 1983.

[Codes, 1942, § 7985; Laws, 1964, ch. 378, § 65; Laws, 1966, ch. 543, § 1; Laws, 1973, ch. 327, § 1; Laws, 1976, ch. 440, § 69; reenacted, Laws, 1981, ch. 465, § 76; en, Laws, 1982, ch. 431, § 3]

Editor's Note — Former § 47-5-141 provided for voluntary donations of blood.

§ 47-5-142. Meritorious earned time.

(1) In order to provide incentive for offenders to achieve positive and worthwhile accomplishments for their personal benefit or the benefit of others, and in addition to any other administrative reductions of the length of an offender's sentence, any offender shall be eligible, subject to the provisions of this section, to receive meritorious earned time as distinguished from earned time for good conduct and performance.

(2) Subject to approval by the commissioner of the terms and conditions of the program or project, meritorious earned time may be awarded for the following: (a) successful completion of educational or instructional programs; (b) satisfactory participation in work projects; and (c) satisfactory participation in any special incentive program.

(3) The programs and activities through which meritorious earned time may be received shall be published in writing and posted in conspicuous places

at all facilities of the department and such publication shall be made available to all offenders in the custody of the department.

(4) The commissioner shall make a determination of the number of days of reduction of sentence which may be awarded an offender as meritorious earned time for participation in approved programs or projects; the number of days shall be determined by the commissioner on the basis of each particular program or project.

(5) No offender shall be awarded any meritorious earned time while assigned to the maximum security facilities for disciplinary purposes.

(6) All meritorious earned time shall be forfeited by the offender in the event of escape and/or aiding and abetting an escape.

(7) Any officer or employee of the department who shall willfully violate the provisions of this section and be convicted therefor shall be removed from office or employment.

(8) An offender may forfeit all or any part of his meritorious earned time allowance for just cause upon the written order of the commissioner or his designee. Any meritorious earned time allowance forfeited under this section shall not be restored nor shall it be re-earned by the offender.

SOURCES: Laws, 1985, ch. 531, § 1; Laws, 1992, ch. 520, § 4; Laws, 2009, ch. 316, § 1; brought forward without change, Laws, 2014, ch. 457, § 73, eff from and after July 1, 2014.

Amendment Notes — The 2009 amendment deleted the former last 3 sentences from the end of (4), which placed a cap on the number of days that could be awarded under the meritorious earned time program.

The 2014 amendment brought the section forward without change.

Cross References — Earned time, generally, see §§ 47-5-138, 47-5-139.

Earned time credit for inmates participating in joint state-county public service work programs, see §§ 47-5-413.

Prison Overcrowding Emergency Powers Act, see §§ 47-5-701 et seq.

Effect of meritorious earned time upon parole eligibility, see § 47-7-3.

Penalties for state and county prisoners who escape from custody, see §§ 97-9-43 et seq.

JUDICIAL DECISIONS

1. In general.

The meritorious earned time provision in Miss. Code Ann. § 47-5-142 clearly referred to a "reduction of sentence," and was not subject to the earned release supervision in Miss. Code Ann. § 47-5-138(5). Peters v. State, 935 So. 2d 1064 (Miss. Ct. App. 2006), writ of certiorari denied by 936 So. 2d 367, 2006 Miss. LEXIS 400 (Miss. 2006), dismissed by 2009 U.S. Dist. LEXIS 70505 (N.D. Miss. Aug. 12, 2009).

Both defendant and the Mississippi Attorney General's Office agreed that defendant's parole and release dates were incorrectly calculated in regard to the date his sentence began, and as to credits and trusty time. Thus, the appellate court reversed the determination that defendant was not entitled to a hearing and remanded the matter to the Mississippi Parole Board to allow the Board to make the exact calculations of defendant's parole and release dates; however, on remand, the Board was free to grant or deny defendant's petition for parole and the circuit court had no authority to determine defendant's parole eligibility. Lizana v. Scott, 910 So. 2d 31 (Miss. Ct. App. 2005).

Inmate's suit against prison officials seeking 180 days of meritorious earned time was properly dismissed where awarding the credit was within the discretion of the officials pursuant to Miss. Code Ann. § 47-5-142, the inmate failed to resolve the matter by contacting his work supervisor, and he received no injury resulting from the denial of his meritorious earned time award. Green v. Sparkman, 829 So. 2d 1290 (Miss. Ct. App. 2002), writ of certiorari denied by 840 So. 2d 716, 2003 Miss. LEXIS 173 (Miss. 2003).

The unexplained failure to award an inmate meritorious earned time did not amount to a violation of his federal and state constitutional rights to due process and equal protection, since an inmate's earning of "time" is a matter of grace or privilege under § 47-5-142, which provides that "meritorious earned time may be awarded." Since correctional officials are vested with discretionary power to award time under certain conditions, inmates are not entitled to it. Ross v. State, 584 So. 2d 777 (Miss. 1991).

A defendant who was sentenced to 10 years imprisonment for armed robbery and 15 years imprisonment for manslaughter to run consecutively, would be eligible for parole on March 30, 1993, where he began the service of his 10-year armed robbery sentence on the date of his initial arrest pursuant to § 99-19-23, he was legally released from that sentence 10 years later on February 5, 1990 but remained held under the 15-year manslaughter sentence, and he earned substantial meritorious earned time; although he would ordinarily have been required to serve at least ¼ of the manslaughter sentence-3 years and 9 months-before he became eligible for parole, his earned time advanced his earliest parole eligibility date by approximately 7 months. Milam v. State, 578 So. 2d 272 (Miss. 1991).

RESEARCH REFERENCES

ALR. Withdrawal, forfeiture, modification, or denial of good-time allowance to prisoner. 95 A.L.R.2d 1265.

Denial of state prisoner's application for, or revocation of, participation in work or study release program or furlough program as actionable under Civil Rights Act of 1871 (42 USCS § 1983). 55 A.L.R. Fed. 208.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 218-231.

22 Am. Jur. Trials 1, Prisoners' Rights Litigation.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 144-146, 148, 154.

§§ 47-5-143 and 47-5-145. Repealed.

Repealed by Laws, 1976, ch. 440, § 92, eff from and after July 1, 1976.

§ 47-5-143. [Laws, 1964, ch. 378, § 45; Laws, 1971, ch. 524, § 10]

§ 47-5-145. [Laws, 1964, ch. 378, § 48]

Editor's Note — Former § 47-5-143 prohibited the use of trusty guards from and after July 1, 1974, and authorized the employment of civilian guards.

Former § 47-5-145 regulated the discipline to be administered for prisoner infractions and made it a felony for any prison employee to violate the section, punishable by dismissal and imprisonment for 1-5 years.

§ 47-5-147. Governor may authorize payment of reward for apprehension of escaped offender.

When an offender escapes from the custody of the department, the commissioner shall immediately notify the Governor who shall have exclusive power to authorize the payment of a reward, in his discretion, not exceeding Fifty Dollars ($50.00), out of any money available in the state treasury not otherwise appropriated, for the arrest and delivery of such offender to the proper authorities.

SOURCES: Codes, 1942, § 7963; Laws, 1964, ch. 378, § 43; Laws, 1976, ch. 440, § 70; reenacted, Laws, 1981, ch. 465, § 77; reenacted, Laws, 1984, ch. 471, § 68; reenacted, Laws, 1986, ch. 413, § 68, eff from and after passage (approved March 28, 1986).

RESEARCH REFERENCES

Am Jur. 27A Am. Jur. 2d, Escape §§ 1 et seq.

§ 47-5-149. United States offenders subject to the laws of the state.

If any offender of the United States courts who has been delivered to the custody of the department shall escape or attempt to escape, or shall commit any other crime while in the state correctional system, he shall be liable to the like punishment as if he had been convicted by the courts of the state.

SOURCES: Codes, 1942, § 7978; Laws, 1964, ch. 378, § 58; Laws, 1976, ch. 440, § 71; reenacted, Laws, 1981, ch. 465, § 78; reenacted, Laws, 1984, ch. 471, § 69; reenacted, Laws, 1986, ch. 413, § 69, eff from and after passage (approved March 28, 1986).

§ 47-5-151. Death of prisoner; investigations, inquests, and autopsies; fees; penalties.

The superintendent (warden) or other person in charge of prisoners, upon the death of any prisoner under his care and control, shall at once notify the county medical examiner or county medical examiner investigator (hereinafter "medical examiner") of the county in which said prisoner died, of the death of the prisoner, and it shall be the duty of such medical examiner, when so notified of the death of such person, to obtain a court order and notify the State Medical Examiner of the death of such prisoner. It shall be mandatory that the State Medical Examiner cause an autopsy to be performed upon the body of the deceased prisoner. Furthermore, the State Medical Examiner shall investigate any case where a person is found dead on the premises of the correctional system, in accordance with Sections 41-61-51 through 41-61-79. The State Medical Examiner shall make a written report of his investigation, and shall furnish a copy of the same, including the autopsy report, to the superintendent (warden) and a copy of the same to the district attorney of the county in which said prisoner died. The copy so furnished to the district attorney shall be turned over by the district attorney to the grand jury, and it shall be the duty of the grand jury, if there be any suspicion of wrongdoing shown by the inquest papers, to thoroughly investigate the cause of such death.

It shall be the duty of the medical examiner of the county in which said prisoner died to arrange for the remains to be transported to the State Medical Examiner for said autopsy, and accompanying the remains shall be the court order for autopsy and any documents or records pertaining to the deceased prisoner, institutional health records or other information relating to the circumstances surrounding the prisoner's death. The State Medical Examiner shall arrange for the remains to be transported to the county in which said prisoner died following completion of the autopsy. If the remains are not claimed for burial within forty-eight (48) hours after autopsy, then said remains may be delivered to the University of Mississippi Medical Center for use in medical research or anatomical study.

The provisions herein set forth in the first paragraph shall likewise apply to any case in which any person is found dead on the premises of the Mississippi State Penitentiary except that the autopsy to be performed on the body of such a person shall not be mandatory upon a person who is not a prisoner unless the medical examiner determines that the death resulted from circumstances raising questions as to the cause of death, in which case the medical examiner may cause an autopsy to be performed upon the body of such deceased person in the same manner as authorized to be performed upon the body of a deceased prisoner.

Provided further, that the provisions herein shall apply with respect to any deceased prisoner who at the time of death is being detained by duly constituted state authority such as the Oakley Youth Development Center, Mississippi State Hospital at Whitfield, East Mississippi State Hospital, or any other state institution.

The provisions of this section shall not apply to a prisoner who was lawfully executed as provided in Sections 99-19-49 through 99-19-55.

Any officer or employee of the prison system or any other officer, employee or person having charge of any prisoner who shall fail to immediately notify the medical examiner of the death of such prisoner, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) and by confinement in the county jail for not more than one (1) year.

SOURCES: Codes, 1942, § 7948; Laws, 1964, ch. 378, § 28; Laws, 1971, ch. 432, § 1; Laws, 1972, ch. 515, § 1; brought forward, Laws, 1981, ch. 465, § 79; Laws, 1983, ch. 391, § 1, ch. 499, § 26; Laws, 1984, ch. 448, § 8; reenacted, Laws, 1984, ch. 471, § 70; reenacted, Laws, 1986, ch. 413, § 70; Laws, 1986, ch. 459, § 33; Laws, 2010, ch. 554, § 9, eff from and after July 1, 2011.

Editor's Note — Section 99-19-49 referred to in this section, was repealed by Laws of 2000, ch. 569, § 18, eff from and after July 1, 2000.

Cross References — Duty of district attorney, see §§ 25-31-1 et seq.

Disposition of bodies of executed prisoners, see § 99-19-55.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 47-5-153. Repealed.

Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976. [Laws, 1964, ch. 378, § 70]

Editor's Note — Former § 47-5-153 authorized the penitentiary board to establish a program of vocational rehabilitation training.

§ 47-5-155. Discharged offenders revolving fund.

There is hereby created a special fund to be known as the "Discharged Offenders Revolving Fund" to be maintained in a bank to be selected by the commissioner. It shall be the duty of the bank, so long as it retains such deposits, to make monthly reports to the State Treasurer of the State of Mississippi as to the condition of the funds on deposit in the depository. Such funds shall be used for the prompt payment in cash to all discharged, pardoned or paroled offenders such amounts as are provided by Section 47-5-157. Upon the passage of this chapter, the Treasurer of the State of Mississippi shall transfer any funds in the State Treasury to the credit of the correctional system an amount which shall not exceed Ten Thousand Dollars ($10,000.00) to the Discharged Offenders Revolving Fund. The fund shall be replenished from time to time by the State Treasurer upon requisitions drawn by the commissioner which requisitions shall be supported by statements reflecting the names of the discharged offenders to whom payments have been made in accordance with the provisions of this chapter. Upon receipt of adequately supported requisitions, the State Auditor shall draw his warrants made payable to the Discharged Offenders Revolving Fund against any funds in the State Treasury to the credit of the correctional system.

SOURCES: Codes, 1942, § 7936; Laws, 1964, ch. 378, § 16; Laws, 1966, ch. 378, § 2; Laws, 1976, ch. 440, § 72; reenacted, Laws, 1981, ch. 465, § 80; reenacted and amended, Laws, 1984, ch. 471, § 71; reenacted, Laws, 1986, ch. 413, § 71, eff from and after passage (approved March 28, 1986).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Qualifications for depositories for state funds, see §§ 27-105-1 et seq.

Portion of the Inmate Welfare Fund to be deposited in Discharted Offenders Revolving Fund created in this section, see § 47-5-158.

Transfer of payments from community service revolving fund to discharged offenders' revolving fund, see § 47-7-49.

§ 47-5-157. Written discharge or release, clothing, Mississippi driver's license or state identification card, money and bus ticket furnished to discharged or released offender.

When an offender is entitled to a discharge from the custody of the department, or is released therefrom on parole, pardon, or otherwise, the commissioner or his designee shall prepare and deliver to him a written discharge or release, as the case may be, dated and signed by him with seal annexed, giving the offender's name, the name of the offense or offenses for which he was convicted, the term of sentence imposed and the date thereof, the county in which he was sentenced, the amount of commutation received, if any, the trade he has learned, if any, his proficiency in same, and such description of the offender as may be practicable and the discharge plan developed as required by law. At least fifteen (15) days prior to the release of an offender as described herein, the director of records of the department shall give the written notice which is required pursuant to Section 47-5-177. The offender shall be furnished, if needed, suitable civilian clothes, a Mississippi driver's license, or a state identification card that is not a department-issued identification card and all money held to his credit by any official of the correctional system shall be delivered to him.

The amount of money which an offender is entitled to receive from the State of Mississippi when he is discharged from the state correctional system shall be determined as follows:

(a) If he has continuously served his sentence in one (1) year or less flat time, he shall be given Fifteen Dollars ($15.00).

(b) If he has served his sentence in more than one (1) year flat time and in less than ten (10) years flat time, he shall be given Twenty-five Dollars ($25.00).

(c) If he has continuously served his sentence in ten (10) or more years flat time, he shall be given Seventy-five Dollars ($75.00).

(d) If he has continuously served his sentence in twenty (20) or more years flat time, he shall be given One Hundred Dollars ($100.00).

There shall be given in addition to the above specified monies in subsections (a), (b), (c) and (d), a bus ticket to the county of conviction or to a state line of Mississippi.

SOURCES: Codes, 1942, § 7949; Laws, 1964, ch. 378, § 29; Laws, 1976, ch. 440, § 73; reenacted, Laws, 1981, ch. 465, § 81; reenacted, Laws, 1984, ch. 471, § 72; Laws, 1985, ch. 444, § 3; reenacted, Laws, 1986, ch. 413, § 72; Laws, 2014, ch. 457, § 46, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in the first undesignated paragraph, added "and the discharge plan developed as required by law" to the end of the first sentence; substituted "At least fifteen (15) days" for "Within forty-eight (48) hours" at the beginning of the second sentence; and in the last sentence, at the beginning, substituted "The offender" for "He", and inserted "a Mississippi driver's license, or a state identification card that is not a department-issued identification card and."

RESEARCH REFERENCES

ALR. Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 A.L.R.4th 722.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 21, 170.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 152, 153.

§ 47-5-158. Inmate Welfare Fund.

(1) The department is authorized to maintain a bank account which shall be designated as the Inmate Welfare Fund. All monies now held in a similar fund or in a bank account or accounts for the benefit and welfare of inmates shall be deposited into the Inmate Welfare Fund. This fund shall be used for the benefit and welfare of inmates in the custody of the department and shall be expended in accordance with any provisions or restrictions in the regulations promulgated under subsection (7) of this section.

(2) There shall be deposited into the Inmate Welfare Fund interest previously earned on inmate deposits, all net profits from the operation of inmate canteens, performances of the Penitentiary band, interest earned on the Inmate Welfare Fund and other revenues designated by the commissioner. All money shall be deposited into the Inmate Welfare Fund as provided in Section 7-9-21.

(3) All inmate telephone call commissions shall be paid to the department. Monies in the fund may be expended by the department, upon requisition by the commissioner or his designee, only for the purposes established in this subsection.

(a) Twenty-five percent (25%) of the inmate telephone call commissions shall be used to purchase and maintain telecommunication equipment to be used by the department.

(b) Until July 1, 2008, twenty-five percent (25%) of the inmate telephone call commissions shall be deposited into the Prison Agricultural Enterprise Fund. Beginning on July 1, 2008, thirty-five percent (35%) of the inmate telephone call commissions shall be deposited into the Prison Agricultural Enterprise Fund. The department may use these funds to supplement the Prison Agricultural Enterprise Fund created in Section 47-5-66.

(c) Forty percent (40%) of the inmate telephone call commissions shall be deposited into the Inmate Welfare Fund.

(4) The commissioner may invest in the manner authorized by law any money in the Inmate Welfare Fund that is not necessary for immediate use, and the interest earned shall be deposited in the Inmate Welfare Fund.

(5) The Deputy Commissioner for Administration and Finance shall establish and implement internal accounting controls for the Inmate Welfare Fund that comply with generally accepted accounting principles and regulations of the Department of Finance and Administration. The Deputy Commissioner for Administration and Finance shall prepare and issue quarterly consolidated and individual facility financial statements to the prison auditor

of the Joint Legislative Committee on Performance Evaluation and Expenditure Review. The deputy commissioner shall prepare an annual report which shall include a summary of expenditures from the fund by major categories and by individual facility. This annual report shall be sent to the prison auditor, the Legislative Budget Office, the Chairman of the Corrections Committee of the Senate, and the Chairman of the Corrections Committee of the House of Representatives.

(6) A portion of the Inmate Welfare Fund shall be deposited in the Discharged Offenders Revolving Fund, as created under Section 47-5-155, in amounts necessary to provide a balance not to exceed One Hundred Thousand Dollars ($100,000.00) in the Discharged Offenders Revolving Fund, and shall be used to supplement those amounts paid to discharged, paroled or pardoned offenders from the department. The superintendent of the Parchman facility shall establish equitable criteria for the making of supplemental payments which shall not exceed Two Hundred Dollars ($200.00) for any offender. The supplemental payments shall be subject to the approval of the commissioner. The State Treasurer shall not be required to replenish the Discharged Offenders Revolving Fund for the supplemental payments made to discharged, paroled or pardoned offenders.

(7)(a) The Inmate Welfare Fund Committee is hereby created and shall be composed of nine (9) members: The Deputy Commissioner for Community Corrections, the Deputy Commissioner of Institutions, the Superintendent of the Parchman facility, the Superintendent of the Rankin County facility, the Superintendent of the Greene County facility, the State Treasurer, the State Auditor, and two (2) members to be appointed by the Commissioner of Corrections, one (1) of whom must have a relative incarcerated by the department at the time of appointment and shall be a representative of inmate families. The commissioner shall appoint the chairman of the committee. The committee shall administer and supervise the operations and expenditures from the Inmate Welfare Fund and shall maintain an official minute book upon which shall be spread its authorization and approval for all such expenditures. The committee shall promulgate regulations governing the use and expenditures of the fund.

(b) Regulations adopted shall set out what types of items shall be allowable purchases, and in all cases, the minutes of the committee shall explain which regulation permits any purchase it approves. Additionally, regulations of the committee shall prescribe the number of members necessary to constitute a quorum, minimum attendance requirements for a member to retain a seat on the committee, and a mission statement for the committee.

(c) The committee shall conduct an annual needs assessment to determine what types of items should be purchased for the benefit of inmates. The needs assessments shall be conducted with the assistance of the department personnel, inmates and the families of inmates.

(d) The committee shall evaluate the proposals of interested third parties for the administration of inmate canteen services as provided in Section 47-5-109.1.

(8) The Department of Audit shall conduct an annual comprehensive special audit of the committee's use of the Inmate Welfare Fund. The department shall incorporate in its special audit report any recommendations it has concerning the financial and management control practices of the committee. The department shall report its findings and recommendations to the Chairmen of the Senate and House Corrections Committees.

SOURCES: Laws, 1989, ch. 307, § 1; Laws, 1990, ch. 534, § 25; Laws, 1995, ch. 621, § 1; Laws, 1996, ch. 379, § 1; Laws, 1996, ch. 474, § 1; Laws, 2002, ch. 459, § 1; Laws, 2002, ch. 624, § 3; Laws, 2007, ch. 555, § 1; Laws, 2008, ch. 329, § 1; Laws, 2015, ch. 432, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 1 of ch. 379, Laws of 1996, effective from and after passage (approved March 18, 1996), amended this section. Section 1 of ch. 474, Laws of 1996, effective from and after passage (approved April 8, 1996), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 474, Laws of 1996, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of ch. 459, Laws of 2002, eff from and after July 1, 2002 (approved March 20, 2002), amended this section. Section 3 of ch. 624, Laws of 2002, eff from and after July 1, 2002 (approved April 25, 2002), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 624, Laws of 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2015 amendment, in (1), inserted "or in a bank account or accounts" in the first sentence, and added "and shall be expended…under subsection (7) of this section" at the end; in (2), deleted "the annual prison rodeo" following "inmate canteens" in the first sentence, and "Mississippi Code of 1972" at the end of the last sentence; in (5), combined the former first and second sentences into the present first sentence by deleting "be the custodian of the Inmate Welfare Fund. He shall" preceding "establish and implement," and in the first sentence, inserted "for the Inmate Welfare Fund" and "and regulations of the Department of Finance and Administration," and substituted "Chairman of the Corrections Committee" for "Chairman of the Penitentiary Committee"; in (7), in (a), substituted "nine (9) members" for "seven (7) members," inserted "the State Treasurer, the State Auditor," and added "one (1) of whom…inmate families" at the end of the first sentence, and substituted "shall promulgate" for "may promulgate" in the last sentence, and added (b) through (d); and in (8), inserted "special" and "committee's use of the" in the first sentence, and added the last two sentences.

ATTORNEY GENERAL OPINIONS

Inmate Welfare Fund money may be used to purchase inmate law library books. Lucas, Oct. 14, 1992, A.G. Op. #92-0733.

The approval of the Inmate Welfare Fund Committee is required prior to any expenditure, and whether the construction of a roof over an exercise yard is a proper use of the Fund is a factual determination to be made by the Committee in conformity with the rules and regulations governing such expenditures. Lindsey, May 30, 2003, A.G. Op. 03-0256.

§§ 47-5-159 through 47-5-171. Repealed.

Repealed by Laws, 1982, ch. 431, § 8, eff from and after July 1, 1982.

§ 47-5-159. [Laws, 1973, ch. 483, § 1; Laws, 1975, ch. 382, § 1; Laws, 1976, ch. 440, § 74; reenacted, Laws, 1981, ch. 465, § 82]

§ 47-5-161. [Laws, 1973, ch. 483, § 2; Laws, 1975, ch. 382, § 2; Laws, 1976, ch. 440, § 75; Laws, 1978, ch. 400, § 9; Laws, 1979, ch. 462, § 4; reenacted, Laws, 1981, ch. 465, § 83]

§ 47-5-163. [Laws, 1973, ch. 483, § 3; Laws, 1976, ch. 440, § 76; reenacted, Laws, 1981, ch. 465, § 84]

§ 47-5-165. [Laws, 1973, ch. 483, § 4; Laws, 1975, ch. 382, § 3; Laws, 1976, ch. 440, § 77; reenacted, Laws, 1981, ch. 465, § 85]

§ 47-5-167. [Laws, 1973, ch. 483, § 5; Laws, 1976, ch. 440, § 78; reenacted, Laws, 1981, ch. 465, § 86]

§ 47-5-169. [Laws, 1973, ch. 483, § 6; brought forward, Laws, 1981, ch. 465, § 87]

§ 47-5-171. [Laws, 1977, ch. 479, § 4; Laws, 1978, ch. 493, § 1; Laws, 1979, ch. 372, § 2; reenacted, Laws, 1980, ch. 309; reenacted and amended Laws, 1981, ch. 465, § 88; Laws, 1981, ch. 502, § 11]

Editor's Note — Former § 47-5-159 pertained to work release program and the duties of board of corrections with respect to such program.

Former § 47-5-161 pertained to work release program ane the extension of limits of offender's confinement and the payment of offender's wages escape.

Former § 47-5-163 pertained to work release program and the conditions on offender's participation.

Former § 47-5-165 pertained to work release program and the consent of certain officials.

Former § 47-5-167 pertained to work release program and cooperation with private industry.

Former § 47-5-169 pertained to work release program and the application to prisoners presently working off penitentiary property.

Former § 45-5-171 pertained to the supervised earned release program.

For similar provisions, see §§ 47-5-413, 47-5-461.

§ 47-5-173. Granting of leave for personal reasons.

The commissioner, or his designees, may grant leave to an offender and may take into consideration sickness or death in the offender's family or the seeking of employment by the offender in connection with application for parole, for a period of time not to exceed ten (10) days. At least fifteen (15) days prior to the release of an offender on leave, the director of records of the department shall give the written notice required pursuant to Section 47-5-177. However, if an offender is granted leave because of sickness or death in the offender's family, written notice shall not be required but the inmate shall be accompanied by a correctional officer or a law enforcement officer. In all other cases the commissioner, or his designees, shall provide required security when deemed necessary. The commissioner, or his designees, in granting leave, shall take into consideration the conduct and work performance of the offender.

SOURCES: Laws, 1977, ch. 479, § 7; Laws, 1978, ch. 338, § 1 brought forward, Laws, 1981, ch. 465, § 89; Laws, 1982, ch. 431, § 4; reenacted, Laws, 1984, ch. 471, § 73; Laws, 1985, ch. 444, § 4; reenacted, Laws, 1986, ch. 413, § 73; Laws, 1996, ch. 373, § 1; Laws, 2014, ch. 457, § 50, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "At least fifteen (15) days" for "Within forty-eight (48) hours" at the beginning of the second sentence.

Cross References — Leave to inmates participating in joint state-county public service work programs, see § 47-5-415.

Passes and leaves under joint county-state work program, see § 47-5-463.

ATTORNEY GENERAL OPINIONS

Under Sections 47-5-173 and 47-5-177 only the Commissioner of Corrections may authorize leave of prisoners. A sheriff is only notified of the release of the prisoners under section 47-5-177. Trowbridge, Nov. 14, 2005, A.G. Op. 05-0472.

RESEARCH REFERENCES

ALR. Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 A.L.R.4th 722.

Grant or denial of furlough or work release to federal prisoner under 18 USCS § 4082(c). 64 A.L.R. Fed. 807.

§ 47-5-175. Agreements to transfer state offenders to federal facilities.

The Commissioner of Corrections, with the concurrence of the Governor, is hereby authorized to enter into agreements with appropriate federal agencies to provide housing and incarceration of persons convicted by the courts of Mississippi and sentenced to the Mississippi Department of Corrections by such courts under such terms and conditions as may be prescribed if a determination is made that the best interest of the State of Mississippi would be served by making such transfer.

SOURCES: Laws, 1983, ch. 412; brought forward, Laws, 1984, ch. 471, § 74; reenacted, Laws, 1986, ch. 413, § 74; Laws, 1988, ch. 504, § 28, eff from and after passage (approved May 6, 1988).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for the automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed Laws, 1984 of ch. 471, § 128, thereby removing the repeal date.

Cross References — Provisions relative to prison system overcrowding and the exercise of powers which tend to reduce prison system population or expand operating capacity during states of emergency, see §§ 47-5-701 et seq.

§ 47-5-177. Notice requirements prior to release of offenders.

At least fifteen (15) days prior to the release of an offender from the custody of the department because of discharge, parole, pardon, temporary personal leave or pass, or otherwise, except for sickness or death in the offender's family, the director of records of the department shall give written or electronic notice of such release to the sheriff of the county and to the chief of police of the municipality where the offender was convicted. If the offender is paroled to a county other than the county of conviction, the director of records shall give written or electronic notice of the release to the sheriff, district attorney and circuit judge of the county and to the chief of police of the municipality where the offender is paroled and to the sheriff of the county and to the chief of police of the municipality where the offender was convicted. The department shall notify the parole officer of the county where the offender is paroled or discharged to probation of any chronic mental disorder incurred by the offender, of any type of infectious disease for which the offender has been examined and treated, and of any medications provided to the offender for such conditions.

The commissioner shall require the director of records to clearly identify the notice of release of an offender who has been convicted of arson at any time. The fact that the offender to be released had been convicted of arson at any time shall appear prominently on the notice of release and the sheriff shall notify all officials who are responsible for investigation of arson within the county of such offender's release and the chief of police shall notify all such officials within the municipality of such offender's release.

SOURCES: Laws, 1985, ch. 444, § 1; Laws, 1987, ch. 388; Laws, 1990, ch. 399, § 1; Laws, 1991, ch. 427, § 1; Laws, 2007, ch. 365, § 1; Laws, 2014, ch. 457, § 51, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "At least fifteen (15) days" for "Within forty-eight (48) hours" at the beginning of the first sentence in the first undesignated paragraph.

Cross References — Procedures relative to written discharge or release, publication of notice pursuant to this section, and provision to offender of clothing, money, and bus ticket, see § 47-5-157.

Procedures relative to granting of leaves for personal reasons, see § 47-5-173.

Requirements for parole, including notice requirements, see § 47-7-17.

Arson, generally, see §§ 97-17-1 through 97-17-14.

ATTORNEY GENERAL OPINIONS

Under Sections 47-5-173 and 47-5-177 only the Commissioner of Corrections may authorize leave of prisoners. A sheriff is only notified of the release of the prisoners under section 47-5-177. Trowbridge, Nov. 14, 2005, A.G. Op. 05-0472.

RESEARCH REFERENCES

ALR. Immunity of public officer from liability for injuries caused by negligently released individual. 5 A.L.R.4th 773.

Governmental tort liability for injuries caused by negligently released individual. 6 A.L.R.4th 1155.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 A.L.R.4th 722.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 72, 74, 79, 83, 84, 90, 93, 94, 99,

109, 111, 117, 122.
CJS. 67A C.J.S., Pardon & Parole § 65.

§ 47-5-179. Department of Corrections to deduct nonemergency medical expenses from inmate accounts.

(1) The responsibility for paying the expenses of nonemergency medical care, treatment and medicine of an inmate is the responsibility of the inmate receiving the care, treatment and medicine.

(2) The Department of Corrections is authorized to deduct the payment for nonemergency medical care, treatment and medicine from an inmate's account and accept payment from other reimbursement programs.

SOURCES: Laws, 1995, ch. 601, § 1, eff from and after July 1, 1995.

JUDICIAL DECISIONS

1. Constitutionality.

Inmate's complaint was procedurally barred as the inmate did not provide authority for the inmate's claim that Miss. Code Ann. § 47-5-179, under which the inmate was charged $ 6 for medical care, deprived the inmate of the inmate's property without due process of law in violation of the Fourteenth Amendment, U.S. Const. Amend. XIV, and the Takings Clause of the Fifth Amendment, U.S. Const. Amend. V; further, the facility's personnel abided by MDOC Policy 25-02-A, and complied with statutory authority, and did not deny the inmate nonemergency medical care due to a lack of funds. Clincy v. Atwood, 65 So. 3d 327 (Miss. Ct. App. 2011).

§ 47-5-180. Appointment of commissioner to make health-care decisions for offender who lacks capacity and does not have relative available; procedure; applicability of Uniform Health-Care Decisions Act.

(1) The following words and phrases that are used in this section are defined in Section 41-41-203: advance health-care directive, agent, capacity, guardian, health-care decision, individual instruction, person, power of attorney for health care and surrogate.

(2) For an offender who is a resident of Mississippi, the department may petition the chancery court of the county of residence of the offender to appoint the commissioner as guardian for an offender who lacks the capacity to make a health-care decision and who does not have a relative or other person available to make the decision.

(3) The department may, consistent with Sections 41-41-201 through 41-41-229, provide an offender with the forms necessary to execute an advance health-care directive.

(4) The department shall place an original or copy of the directive in the offender's medical record, attach the directive to the offender's commitment report and provide a copy of the directive to case management.

(5) If a department physician determines that an offender's life expectancy is less than one (1) year or that the offender is to undergo certain medical procedures to be determined by the department medical director, the department shall provide the offender with the opportunity to alter or execute a written advance health-care directive.

(6) When the department provides an offender with the forms necessary to execute an advance health-care directive, Sections 41-41-201 through 41-41-229 and the following provisions apply:

(a) Absent a court order to the contrary, an offender in the department's custody shall not act as the agent, guardian or surrogate for the offender executing an advance health-care directive. But the principal offender may designate another offender as the agent, guardian or surrogate without judicial approval if the offenders are related by blood, marriage or adoption.

(b) Absent a court order to the contrary, a department employee shall not act as the agent, guardian or surrogate for the offender executing an advance health-care directive. But the principal offender may designate a department employee as the agent, guardian or surrogate without judicial approval if the offender and the employee are related by blood, marriage or adoption.

(c) In addition to the restrictions in Section 41-41-205, neither an offender in the department's custody nor a department employee shall be used as a witness for a power of attorney for health care that an offender executes while in the department's custody.

SOURCES: Laws, 2012, ch. 529, § 1, eff from and after July 1, 2012.

§ 47-5-181. Conversion of community work centers to pre-release centers.

(1) The Department of Corrections is authorized to convert four (4) community work centers to pre-release centers. The department shall convert the community work centers as follows: one (1) center in the northern part of the state, two (2) centers in the central part of the state, and one (1) center in the southern part of the state.

(2) The department may place any inmate in a pre-release center if: (a) the inmate is within one (1) year of his or her earliest release date, and (b) the inmate is approved for placement by the classification hearing officer and the commissioner or the commissioner's designee.

(3) The department shall notify, by certified mail, each member of the board of supervisors of the county in which the center is located of the department's intent to convert the community work center to a pre-release center. The board of supervisors shall have thirty (30) days after the date of the mailing to disapprove the conversion of the center. If the board of supervisors disapproves of the pre-release center, the department shall not convert the community work center.

SOURCES: Laws, 1996, ch. 349, § 1; Laws, 2001, ch. 393, § 7; Laws, 2007, ch. 414, § 1, eff from and after July 1, 2007.

§ 47-5-183. Department of Corrections may create a postconviction DNA database.

The Mississippi Department of Corrections is authorized, subject to the availability of funds, to secure a biological sample for purposes of DNA identification analysis from every individual convicted of a felony or in its custody before release from or transfer to a state correctional facility or county jail or other detention facility.

SOURCES: Laws, 2003, ch. 459, § 1, eff from and after July 1, 2003.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Governing Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

ALCOHOLIC BEVERAGES, CONTROLLED SUBSTANCES, NARCOTIC DRUGS, WEAPONS, AND OTHER CONTRABAND

Sec.	
47-5-191.	Definitions.
47-5-192.	Possession of prohibited items by persons other than offenders.
47-5-193.	Prohibitions generally.
47-5-194.	Prohibition against possession of cash or negotiable instruments; limitations upon prohibition; confiscation of money found in excess of allowable amounts; disposition of moneys confiscated.
47-5-195.	Penalties for violations.
47-5-196.	Mandatory drug testing of employees of Department of Corrections.
47-5-198.	Sale, possession, or use of controlled substances or narcotic drugs within facilities; knowledge by employees; punishment for violations.

§ 47-5-191. Definitions.

As used in Sections 47-5-191 through 47-5-195, "alcoholic beverage" shall have the meaning defined in Section 67-1-5 of the Local Option Alcoholic Beverage Control Law of the State of Mississippi; "controlled substance" means any substance defined as a controlled substance by the Uniform Controlled Substances Law of the State of Mississippi; "narcotic drug" means any substance defined as a narcotic drug by Section 41-29-105; "weapon or deadly weapon" shall mean any weapon or firearm mentioned in Section 97-37-1, and any rifle or shotgun regardless of barrel length; and "contraband" means coin or currency, money orders, traveler's checks, promissory notes, credit cards, personal checks or other negotiable instruments, knives, sharpened instruments, tools, explosives, ammunition and drug paraphernalia as defined in Section 41-29-105(v).

SOURCES: Laws, 1978, ch. 394, § 2; Laws, 1986, ch. 341, § 2; Laws, 1986, ch. 423, § 3; Laws, 1995, ch. 420, § 2, eff from and after passage (approved March 15, 1995).

Cross References — Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Offense of selling or possessing intoxicating beverages in penitentiaries, jails, or convict camps, see § 97-31-35.

§ 47-5-192. Possession of prohibited items by persons other than offenders.

(1) The Commissioner of Corrections may prohibit the possession by employees or officers of the Department of Corrections or any person allowed upon the premises of a correctional facility under his jurisdiction of any item, the possession of which by offenders is prohibited or regulated.

(2) The commissioner may distinguish between classes of employees and visitors and may establish zones or designate areas or facilities where such regulations apply in his discretion and as necessary for security and orderly operation of prison facilities.

(3) The commissioner shall promulgate rules authorized by this section in accordance with the Mississippi Administrative Procedures Act.

(4) Any person who violates a duly enacted rule authorized by this section shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than one (1) year or by a fine of not more than One Thousand Dollars ($1,000.00), or both.

SOURCES: Laws, 1986, ch. 423, § 2, eff from and after passage (approved April 1, 1986).

Cross References — Provisions of the Mississippi Administrative Procedures Act, see §§ 25-43-1.101 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 47-5-193. Prohibitions generally.

It is unlawful for any officer or employee of the department, of any county sheriff's department, of any private correctional facility in this state in which offenders are confined, of any municipal or other correctional facility in this state, or for any other person or offender to possess, furnish, attempt to furnish, or assist in furnishing to any offender confined in this state any weapon, deadly weapon, unauthorized electronic device, contraband item, or cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards or chargers. It is unlawful for any person or offender to take, attempt to take, or assist in taking any weapon, deadly weapon, unauthorized electronic device, contraband item, cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards or chargers on property within the state belonging to the department, a county, a municipality, or other entity that is occupied or used by offenders, except as authorized by law.

SOURCES: Laws, 1978, ch. 394, § 1; Laws, 1986, ch. 423, § 4; Laws, 1996, ch. 420, § ; Laws, 1998, ch. 391, § 1; Laws, 2004, ch. 429, § 1; Laws, 2006, ch. 439, § 1; Laws, 2008, ch. 415, § 1; Laws, 2012, ch. 325, § 1, eff from and after passage (approved Apr. 5, 2012.)

Cross References — Additional prohibited items, see § 47-5-194.
Penalties for violations of this section and § 47-5-194, see § 47-5-195.

JUDICIAL DECISIONS

1. Evidence.
2. — Sufficient.
3. Limiting instruction.
4. Recusal.
5. In general.
6. Constitutionality.
7. Applicability.

1. Evidence.

2. — Sufficient.

Overwhelming weight of the evidence supported jury's conviction of defendant for possession of a cell phone within a correctional facility. The evidence established that during a search of defendant, a cell phone fell out of his pants and that a twenty-two minute call had been made on the phone to one of defendant's family members. Pruitt v. State, 122 So. 3d 806 (Miss. Ct. App. 2013).

There was sufficient testimony to support a jury's verdict that defendant was guilty of bringing contraband into a prison in violation of Miss. Code § 47-5-193, as a corrections officer testified that the officer found money in defendant's bra. Weems v. State, 63 So. 3d 579 (Miss. Ct. App. 2010), writ of certiorari dismissed by 2011 Miss. LEXIS 302 (Miss. June 16, 2011).

Defendant's conviction for possession of cellular phones while confined in a correctional facility, in violation of Miss. Code. Ann. § 47-5-193, was proper because there was ample evidence for the jury to find that defendant knowingly possessed the contraband phones, which were hidden in the crotch area of his thermal long underwear under four pairs of boxer shorts. Lynch v. State, 24 So. 3d 1043 (Miss. Ct. App. 2010).

Defendant's argument that his conviction for bringing contraband into a jail facility must be reversed and rendered because the record lacked proof that the jacket in which the marijuana was found belonged to him lacked merit because (1) defendant's testimony was the complete opposite of the testimony of three witnesses; (2) defendant's testimony on cross-examination contradicted his direct testimony because it was not until cross-examination that defendant mentioned taking a jacket from a locker that he once shared with another inmate, and, on direct, defendant had stated that the jacket had come from another locker; (3) a witness testified that the marijuana was found in the sleeve of the jacket that defendant was wearing when he returned to the jail; and (4) a jury considered all of the testimony presented at trial and concluded that defendant was guilty as charged. Weeks v. State, 971 So. 2d 645 (Miss. Ct. App. 2007).

3. Limiting instruction.

In a case in which defendant was convicted of violating Miss. Code Ann, § 47-5-193, he unsuccessfully argued on appeal that the trial judge failed to instruct the jury to disregard evidence of other crimes, wrongs, or acts where there was no foundation for their admissibility and no showing that the probative value outweighed the prejudicial effect. Defense counsel failed to request a limiting instruction, and the trial judge was not required to issue the limiting instruction sua sponte after defense counsel objected; Rule 105 clearly placed the burden of requesting a Miss. R. Evid. Rule 404(b) limiting instruction upon counsel. Lindsey v. State, 29 So. 3d 121 (Miss. Ct. App. 2010).

4. Recusal.

In a case in which defendant was convicted of violating Miss. Code Ann, § 47-5-193, his argument that the trial judge should have recused himself after speaking to the potential jurors was procedurally barred on appeal since he failed to object or file a motion seeking the trial judge to recuse himself. Lindsey v. State, 29 So. 3d 121 (Miss. Ct. App. 2010).

5. In general.

Miss. Code Ann. § 47-5-193 turns on possession of cellular phones, not ownership. Lynch v. State, 24 So. 3d 1043 (Miss. Ct. App. 2010).

6. Constitutionality.

In a prosecution of defendant for possession of contraband in a correctional facility under Miss. Code Ann. § 47-5-193, defendant's argument that the statute was unconstitutionally vague was without merit. Houston v. State, — So. 3d —, 2014 Miss. App. LEXIS 636 (Miss. Ct. App. Nov. 4, 2014).

7. Applicability.

In a prosecution of defendant for possession of contraband in a correctional facility under Miss. Code Ann. § 47-5-193, defendant's argument that the statute's designation of "offender" did include him was meritless. Houston v. State, — So. 3d —, 2014 Miss. App. LEXIS 636 (Miss. Ct. App. Nov. 4, 2014).

RESEARCH REFERENCES

ALR. Nature and elements of offense of conveying contraband to state prisoner. 64 A.L.R.4th 902.

Validity, construction, and application of state statute criminalizing possession of contraband by individual in penal or correctional institution. 45 A.L.R.5th 767.

§ 47-5-194. Prohibition against possession of cash or negotiable instruments; limitations upon prohibition; confiscation of money found in excess of allowable amounts; disposition of moneys confiscated.

(1) It is unlawful for any offender committed to the department to possess:

(a) Coin or currency on his person or in premises assigned to him or under his control;

(b) A money order, traveler's check, promissory note, credit card, personal check or other negotiable instrument.

(2) Subsection (1) does not apply to offenders who are granted a parole; placed on work release, supervised earned release, earned probation or probation; or granted leave for the duration of such leave; however, these offenders may be restricted by the parole or probation order or by order of the commissioner with respect to amounts or form of money possessed or controlled by the offenders.

(3) A violation of subsection (1) shall be considered a rules violation or a violation of the conditions of parole or probation as the case may be and shall be processed in the manner of similar violations.

(4) Any money possessed by an offender may be confiscated by the corrections officer who discovers the possession. The department shall establish a policy and procedure for the collection and accounting of all confiscated funds. All confiscated coin or currency shall be deposited in a special fund

which is created in the State Treasury. The money in this special fund may be appropriated by the Legislature to enhance the security of the department's facilities. Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund, but funds may be expended only by appropriation approved by the Legislature. Any interest earned on amounts in the special fund shall be deposited to the credit of the special fund.

(5) The possession of coin, currency, money order, traveler's check or other negotiable instrument on the grounds of a facility is prohibited.

(6) The department shall establish a cashless system for facilities no later than July 1, 1996. The department shall provide lockers for visitors to place prohibited items when on grounds of a facility. The department is authorized to charge visitors an hourly rental fee for use of the lockers. Community work centers and restitution centers are exempt unless designated by the commissioner as being included in the cashless system.

SOURCES: Laws, 1986, ch. 423, § 1; Laws, 1994, ch. 319, § 1; Laws, 1995, ch. 420, § 1; Laws, 1996, ch. 372, § 1; Laws, 1996, ch. 421, § 1, eff from and after July 1, 1996.

Cross References — Additional prohibitions, see § 47-5-193.
Penalties for violations of this section and § 47-5-193, see § 47-5-195.

§ 47-5-195. Penalties for violations.

Any person who violates any provision of Section 47-5-193 or 47-5-194 shall be guilty of a felony and upon conviction shall be punished by confinement in the Penitentiary for not less than three (3) years nor more than fifteen (15) years, and may be fined not more than Twenty-five Thousand Dollars ($25,000.00), or both.

SOURCES: Laws, 1978, ch. 394, § 3; Laws, 1998, ch. 391, § 2, eff from and after July 1, 1998.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

In a prosecution of defendant for possession of contraband in a correctional facility, the trial court properly sentenced defendant to serve fifteen years with five years suspended pursuant to this section. Houston v. State, — So. 3d —, 2014 Miss. App. LEXIS 636 (Miss. Ct. App. Nov. 4, 2014).

RESEARCH REFERENCES

ALR. Nature and elements of offense of conveying contraband to state prisoner. 64 A.L.R.4th 902.

Validity, construction, and application of state statute criminalizing possession of contraband by individual in penal or correctional institution. 45 A.L.R.5th 767.

§ 47-5-196. Mandatory drug testing of employees of Department of Corrections.

The Department of Corrections shall develop and implement a drug testing program for its employees no later than July 1, 1997. The department shall develop a written policy for alcohol and drug testing of employees to deter the use of alcohol and drugs at its facilities and to ensure an alcohol and drug free environment at correctional facilities. Participation by employees is mandatory and the tests may be conducted in a random manner.

SOURCES: Laws, 1997, ch. 400, § 1, eff from and after passage (approved March 18, 1997).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statute criminalizing possession of contraband by individual in penal or correctional institution. 45 A.L.R.5th 767.

Validity, under federal constitution, of regulations, rules or statutes requiring random or mass drug testing of public employees or persons whose employment is regulated by state, local or federal government. 86 A.L.R. Fed. 420.

§ 47-5-198. Sale, possession, or use of controlled substances or narcotic drugs within facilities; knowledge by employees; punishment for violations.

(1) It is unlawful for any person to sell within, bring to, or be in possession of, in any correctional facility or convict camp within the state or any county, municipal or other jail within the state, except as authorized by law, any controlled substance or narcotic drug.

(2) It is unlawful for any person who is the keeper or officer in charge of the facility, camp or jail, or who is employed in or about the facility, camp or jail to knowingly permit any controlled substance or narcotic drug to be sold, possessed or used therein contrary to law.

(3) Any person who violates the provisions of this section and is convicted shall be fined up to Twenty-five Thousand Dollars ($25,000.00) and be punished by imprisonment for not less than three (3) years nor more than seven (7) years; and the person is not eligible for probation, parole, suspension of sentence, earned time allowance or any other reduction of sentence.

SOURCES: Laws, 1998, ch. 391, § 3, eff from and after July 1, 1998.

JUDICIAL DECISIONS

1. Conviction proper.
2. Attorney disbarment.
3. Sufficient evidence.

1. Conviction proper.

Defendant's conviction for the sale of marijuana within a correctional facility in violation of Miss. Code Ann. § 47-5-198(1) was proper because the trial judge did not need to recuse himself from the trial since nothing in the judge's response gave rise to overcome the presumption of impartiality. Jackson v. State, 962 So. 2d 649 (Miss. Ct. App. 2007), writ of certiorari denied by 962 So. 2d 38, 2007 Miss. LEXIS 434 (Miss. 2007).

2. Attorney disbarment.

Where the attorney was charged with selling marijuana to his client while he was incarcerated at the county jail, the attorney was convicted of the sale of marijuana within a correctional facility in a violation of Miss. Code Ann. § 47-5-198 and disbarred from the practice of law. Miss. Bar v. Jackson, 987 So. 2d 930 (Miss. 2008).

3. Sufficient evidence.

Defendant was convicted of possession of a controlled substance within a correctional facility after jailers found marijuana, aluminum foil, and a blunt cigar inside of a deodorant container she left for her incarcerated husband; defendant claimed it would have been impossible for her to hide the drugs in the deodorant container during the three to five minutes it took to get from the store where she purchased the deodorant to the jail. However, defendant's appeal was based on a factual dispute that the jury resolved in the state's favor, and the jury obviously rejected defendant's impossibility defense. Woods v. State, 19 So. 3d 817 (Miss. Ct. App. 2009).

Where the State presented testimony from an inmate and correction officers that defendant attempted to plant a brown paper bag containing marijuana on another inmate, the evidence was sufficient to convict him for possession of marijuana in a correctional facility in violation of Miss. Code Ann. § 47-5-198. The trial court did not err by denying his motion for directed verdict. Stewart v. State, 986 So. 2d 304 (Miss. 2008).

MISSISSIPPI OFFENDERS AND VOLUNTEER EFFORT [REPEALED]

Sec.
47-5-201 through 47-5-209. Repealed.

§§ 47-5-201 through 47-5-209. Repealed.

Repealed by Laws, 1981, ch. 386, § 1, eff from and after July 1, 1981.
[Laws, 1978, ch. 334, §§ 1-5]

Editor's Note — Former §§ 47-5-201 through 47-5-209 provided for the establishment and operation of a volunteer program in the state department of corrections known as M.O.V.E. (Mississippi Offenders and Volunteer Effort) and authorized county and municipal participation.

PENITENTIARY-MADE GOODS

Sec.
47-5-301. Short title.
47-5-303. Declaration of purpose.

47-5-305. Authorization to purchase materials and engage supervisory personnel; sale of products to public; contracts with private enterprise.
47-5-307. Purchase of penitentiary-made goods by other state agencies; state and commercial specifications.
47-5-309. Repealed.
47-5-311. Catalogues.
47-5-313. Summary reports of goods purchased by other state agencies.
47-5-315. Priority of production requirements.
47-5-317. Determination of prices.
47-5-319. Annual audit reports.
47-5-321. Promulgation of policies.
47-5-323. Expenditure of appropriations; deposit of collected monies in prison industries fund.
47-5-325. Repealed.
47-5-327. Construction of provisions.
47-5-329. Prison industries advisory council; members; compensation.
47-5-331. Lease of buildings at Parchman facility; provisions of lease.

§ 47-5-301. Short title.

Sections 47-5-301 through 47-5-327 may be cited as the "Penitentiary-Made Goods Law of 1978."

SOURCES: Laws, 1978, ch. 408, § 1; brought forward, Laws, 1984, ch. 471, § 75; reenacted, Laws, 1986, ch. 413, § 75, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed Laws of 1984, ch. 471, § 128, thereby removing the repeal date.

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Mississippi Prison Industries Act of 1990, see § 47-5-531.

Authorization to transfer and expend monies from Prison Industries Fund to carry out purposes of sections 47-5-301 et seq., and 47-5-501 et seq., see § 47-5-565.

Entities to whom prison-made goods or services produced by corporation from prison industries may be sold, see § 47-5-549.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 180.

§ 47-5-303. Declaration of purpose.

The aims and purposes of Sections 47-5-301 through 47-5-327 are:

(a) To utilize the labor of offenders for self-maintenance and for reimbursing this state for expenses incurred by reason of their crimes and imprisonment; and

(b) To effect the requisitioning and disbursement of penitentiary products directly through established state authorities and to permit the sale of such products to the public.

SOURCES: Laws, 1978, ch. 408, § 2; Laws, 1981, ch. 516, § 1; brought forward, Laws, 1984, ch. 471, § 76; reenacted, Laws, 1986, ch. 413, § 76, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed, Laws of 1984, ch. 471, § 128, thereby removing the repeal date.

Cross References — Working of prisoners in penitentiary, see § 47-5-126.

§ 47-5-305. Authorization to purchase materials and engage supervisory personnel; sale of products to public; contracts with private enterprise.

(1) The State Department of Corrections is authorized to purchase, in the manner prescribed by law, equipment, raw materials and supplies, and to engage the supervisory personnel necessary to establish and maintain for this state at the penitentiary or any penal farm or institution now or hereafter under the control of such department industries for the utilization of services of offenders in the manufacture or production of such articles or products as may be needed for the construction, operation, maintenance or use of any commission, department, institution or other agency supported in whole or in part by this state and the political subdivisions thereof. The State Department of Corrections is further authorized to sell such products to the public.

(2) The Department of Corrections is authorized to contract for work projects from outside sources, including private enterprise, for processing, fabrication or repair; however, preference shall be given to the performance of such work projects for any commission, department, institution or other agency of the state.

(3) The Department of Corrections is further authorized to contract with private or public industrial and business enterprises regarding the location of operations or projects upon any property utilized by the state prison correctional system in accordance with the provisions of this chapter.

SOURCES: Laws, 1978, ch. 408, § 3; Laws, 1981, ch. 412, § 1; Laws, 1981, ch. 516, § 3; Laws, 1983, ch. 409, § 8; brought forward, Laws, 1984, ch. 471, § 77; reenacted, Laws, 1986, ch. 413, § 77; Laws, 1992, ch. 506, § 6, eff from and after passage (approved May 15, 1992).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Leasing or hiring of county prisoner, see § 47-1-19.

Correctional industries work programs, see §§ 47-5-501 et seq.

Entities to whom prison-made goods or services produced by corporation from prison industries may be sold, see § 47-5-549.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 180.

CJS. 18 C.J.S., Convicts §§ 23 et seq.

§ 47-5-307. Purchase of penitentiary-made goods by other state agencies; state and commercial specifications.

(1) On and after the establishment of the industries provided for in Sections 47-5-301 through 47-5-327, all commissions, departments, institutions and other agencies of this state, which are supported in whole or in part by this state, may purchase from the State Department of Corrections all articles or products required by such commissions, departments, institutions or agencies which are produced or manufactured by the State Department of Corrections with the use of penitentiary labor as provided for by Sections 47-5-301 through 47-5-327. All purchases made by state agencies shall be made through the State Fiscal Management Board upon requisition by the proper authority of the commission, department, institution or agency. Political subdivisions of this state may purchase directly from the State Department of Corrections.

(2) Any article or product manufactured by the State Department of Corrections for sale through the State Fiscal Management Board to any commission, department, institution or agency of the state or to any political subdivision thereof, shall be manufactured and/or produced only upon state specifications developed by and through the State Fiscal Management Board. However, if such specifications have not been developed by the State Fiscal Management Board, then production may be based upon commercial specifications in current use by industry for the manufacture of such articles and products for sale to the state and political subdivisions thereof which have first been approved by the State Fiscal Management Board. For purposes of Sections 47-5-301 through 47-5-327, state specifications and commercial specifications approved by the State Fiscal Management Board shall mean the latest complete version of any specification including amendments thereto.

SOURCES: Laws, 1978, ch. 408, § 4; Laws, 1981, ch. 516, § 5; brought forward without change, Laws, 1984, ch. 471, § 78; Laws, 1984, ch. 488, § 226; reenacted, Laws, 1986, ch. 413, § 78, eff from and after passage (approved March 28, 1986).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Entities to whom prison-made goods or services produced by corporation from prison industries may be sold, see § 47-5-549.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 180.

CJS. 18 C.J.S., Convicts § 24.

§ 47-5-309. Repealed.

Repealed by Laws of 1981, ch. 516, § 7, eff from and after July 1, 1981. [Laws, 1978, ch. 408, § 5]

Editor's Note — Former § 47-5-309 set forth exceptions to the mandatory purchase provisions of the Penitentiary-Made Goods Law.

§ 47-5-311. Catalogues.

The State Department of Corrections shall cause to be prepared, at such times as it may determine, catalogues containing an accurate and complete description of all articles and products manufactured or produced by it pursuant to the provisions of Sections 47-5-301 through 47-5-327. Copies of such catalogues shall be sent to all commissions, departments, institutions and agencies of this state and made accessible to all political subdivisions of this state referred to in the preceding sections.

SOURCES: Laws, 1978, ch. 408, § 6(1); brought forward, Laws, 1984, ch. 471, § 79; reenacted, Laws, 1986, ch. 413, § 79, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Entities to whom prison-made goods or services produced by corporation from prison industries may be sold, see § 47-5-549.

§ 47-5-313. Summary reports of goods purchased by other state agencies.

At least thirty (30) days before the beginning of each fiscal year, the State Fiscal Management Board shall provide to the State Department of Corrections, summary reports of the kind and amount of articles and products purchased for state commissions, departments, institutions, agencies and political subdivisions based upon the previous nine (9) months' experience. Not more than one hundred (100) days following the close of each fiscal year, the

State Fiscal Management Board shall submit to the State Department of Corrections a report showing the kinds and amounts of such penitentiary-manufactured articles purchased by all state commissions, departments, institutions, agencies and political subdivisions based upon the purchase experience of the entire previous fiscal year. All such reports shall refer, insofar as possible, to the items or products contained in the catalogue as issued by the State Department of Corrections. The State Fiscal Management Board may at any time request the State Department of Corrections to manufacture or produce additional articles or products.

SOURCES: Laws, 1978, ch. 408, § 6(2); brought forward, Laws, 1984, ch. 471, § 80; Laws, 1984, ch. 488, § 227; reenacted, Laws, 1986, ch. 413, § 80, eff from and after passage (approved March 28, 1986).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Cross References — Entities to whom prison-made goods or services produced by corporation from prison industries may be sold, see § 47-5-549.

§ 47-5-315. Priority of production requirements.

The articles or products manufactured or produced by penitentiary labor in accordance with the provisions of Sections 47-5-301 through 47-5-327 shall be devoted first, to fulfilling the requirements of the commissions, departments, institutions and agencies of this state which are supported in whole or in part by this state; and secondly, to supplying the political subdivisions of this state with such articles and products; and lastly to producing articles and products for sale to the public.

SOURCES: Laws, 1978, ch. 408, § 7; Laws, 1981, ch. 516, § 6; brought forward, Laws, 1984, ch. 471, § 81; reenacted, Laws, 1986, ch. 413, § 81, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Sale of penitentiary made products to the public, see § 47-5-305.

Entities to whom prison-made goods or services produced by corporation from prison industries may be sold, see § 47-5-549.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 180.

CJS. 18 C.J.S., Convicts § 24.

§ 47-5-317. Determination of prices.

The Industries Division of the State Department of Corrections shall fix and determine the prices at which all articles or products manufactured or produced shall be furnished.

SOURCES: Laws, 1978, ch. 408, § 8; Laws, 1984, ch. 387; brought forward, Laws, 1984, ch. 471, § 82; reenacted, Laws, 1986, ch. 413, § 82, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

§ 47-5-319. Annual audit reports.

In addition to the information ordinarily required by law in the annual audits of expenditures and operations of the State Department of Corrections made by the state auditor, after March 23, 1978, audit reports shall also include a detailed statement of all materials, machinery or other property procured, and the cost thereof, and the expenditures made during the audited year for manufacturing purposes, together with a statement of all materials on hand to be manufactured, or in process of manufacture, or manufactured, and the values of all machinery, fixtures or other appurtenances for the purpose of utilizing the productive labor of offenders, and the earnings realized therefrom during the year.

SOURCES: Laws, 1978, ch. 408, § 9; brought forward, Laws, 1984, ch. 471, § 83; reenacted, Laws, 1986, ch. 413, § 83, eff from and after passage (approved March 28, 1986).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Auditor of correctional system, generally, § 47-5-35.

§ 47-5-321. Promulgation of policies.

The State Board of Corrections shall have the power and authority to prepare and promulgate policies which are necessary to give effect to the provisions of Sections 47-5-301 through 47-5-327 with respect to matters of administration respecting the same which if made shall be in writing, entered on their minutes, and available to the general public for inspection during the regular office hours of the department. Before taking effect, said policies, as well as subsequent amendments thereto, shall be placed on file by the department in the office of the secretary of state in a well-bound book designated by the secretary for that purpose.

SOURCES: Laws, 1978, ch. 408, § 10; brought forward, Laws, 1984, ch. 471, § 84; reenacted, Laws, 1986, ch. 413, § 84, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

§ 47-5-323. Expenditure of appropriations; deposit of collected monies in prison industries fund.

(1) In order to carry out the provisions of Sections 47-5-301 through 47-5-327, the department is authorized to expend such monies out of appropriations from the Prison Industries Fund, as established by Section 47-5-66, as may be necessary to erect buildings, to improve existing facilities, to purchase equipment, to procure tools, supplies and materials, to purchase, install or replace equipment and otherwise to defray the necessary expenses incident to the employment of offenders as herein provided.

(2) All monies collected by the State Department of Corrections from the sale or disposition of articles and products manufactured or produced by penitentiary labor in accordance with the provisions of Sections 47-5-301 through 47-5-327 shall be forthwith deposited into the Prison Industries Fund authorized by subsection (1) of this section. The money so collected and deposited shall be used solely for the purchase of raw materials, manufacturing supplies, equipment, machinery and buildings used to carry out the purposes of Sections 47-5-301 through 47-5-327, to otherwise defray the necessary expenses incident thereto, including the employment of such necessary supervisory personnel as is unavailable in the inmate population. All expenditures from such fund shall be subject to the approval of the commissioner; provided, however, that such Prison Industries Fund shall never be maintained in excess of the amount necessary to carry out efficiently and properly the intentions of Sections 47-5-301 through 47-5-327.

SOURCES: Laws, 1978, ch. 408, § 11; brought forward, Laws, 1984, ch. 471, § 85; Laws, 1984, ch. 488, § 228; reenacted, Laws, 1986, ch. 413, § 85; Laws, 1988, ch. 504, § 29, eff from and after passage (approved May 6, 1988).

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Establishment of prison industries fund, see § 47-5-66.

§ 47-5-325. Repealed.

Repealed by Laws of 1981, ch. 516, § 7, eff from and after July 1, 1981. [Laws, 1978, ch. 408, § 12]

Editor's Note — Former § 47-5-325 prescribed penalties for selling penitentiary-made products on the open market.

§ 47-5-327. Construction of provisions.

The provisions of Sections 47-5-301 through 47-5-327 shall be liberally construed to achieve the primary objective of vocational training and rehabilitation of offenders through work in industrial types of activities which also will best serve the economical and efficient operation of state agencies. The provisions of Sections 47-5-301 through 47-5-327 shall be considered as supplementary, or in addition to, other existing provisions of law relative to the employment of offenders.

SOURCES: Laws, 1978, ch. 408, § 13; brought forward, Laws, 1984, ch. 471, § 86; reenacted, Laws, 1986, ch. 413, § 86, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws, 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

§ 47-5-329. Prison industries advisory council; members; compensation.

(1) The Commissioner of Corrections shall appoint a Prison Industries Advisory Council. The council shall advise the commissioner and the Governor on all aspects of the prison industry program at the State Penitentiary, including, but not limited to, the types and quantity of products to be manufactured and their manner of production.

(2) The council shall consist of the commissioner, who shall be chairman of the council, and six (6) citizens appointed by the commissioner. The members appointed by the commissioner shall be active leaders of business and industry in this state, and one (1) of the members shall be a representative of organized labor. The members shall be familiar, insofar as possible, with the various types of prison industries in operation or contemplated for operation at the State Penitentiary. Of the initial members of the council, one (1) shall be appointed for a term of one (1) year; one (1) for a term of two (2) years; one (1) for a term of three (3) years; one (1) for a term of four (4) years; one (1) for a term of five (5) years; and one (1) for a term of six (6) years. Thereafter, each member shall serve a term of four (4) years. Vacancies shall be filled for the remainder of the unexpired term and members may be reappointed. Members shall receive such per diem as provided by law for each day actually spent in the performance of their duties, in addition to the actual and necessary

expenses incurred in the discharge of their duties. The per diem and expenses shall be paid from the Prison Industries Fund as created in Section 47-5-66.

(3) The council shall meet quarterly and at such other times deemed necessary by the commissioner.

SOURCES: Laws, 1981, ch. 516, § 2; brought forward, Laws, 1984, ch. 471, § 87; reenacted, Laws, 1986, ch. 413, § 87; Laws, 1988, ch. 504, § 30, eff from and after passage (approved May 6, 1988).

Cross References — Traveling expenses of state officers and employees, see § 25-3-41.

Uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

§ 47-5-331. Lease of buildings at Parchman facility; provisions of lease.

(1) Upon request of the Board of Corrections the Governor's Office of General Services is authorized to lease one or more existing buildings or portions thereof on the grounds of the Parchman facility of the Department of Corrections (a) to a private individual, firm or corporation for the purpose of establishing and operating a factory for the manufacture and processing of products, or (b) to any other commercial enterprise deemed consistent with the aims and purposes of the Penitentiary-Made Goods Law. The leased premises shall include any real estate needed for reasonable access to and access from the leased buildings. The term of the lease shall not exceed twenty (20) years. Money derived from the lease of such buildings and real estate shall be placed in the Prison Industries Fund in the State Treasury.

(2) Each lease negotiated and concluded under subsection (1) of this section shall include and shall be valid only so long as the lessee adheres to the following provisions:

(a) All persons employed in the factory or other commercial enterprise operated in the leased property, except for lessee's supervisory employees and necessary training personnel approved by the warden, shall be inmates of the State Penitentiary and approved for such employment by the warden and the lessee.

(b) The factory or other commercial enterprise operated in the leased property shall observe at all times such practices and procedures regarding security as the lease may specify, or as the warden may temporarily stipulate during periods of emergency.

(c) The factory or other commercial enterprise operated in the leased property shall be deemed a private enterprise and subject to all the laws and lawfully adopted rules of this state governing the operation of similar business enterprises elsewhere.

SOURCES: Laws, 1981, ch. 516, § 4; brought forward, Laws, 1984, ch. 471, § 88; Laws, 1984, ch. 488, § 229; reenacted, Laws, 1986, ch. 413, § 88, eff from and after passage (approved March 28, 1986).

Editor's Note — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Establishment of prison industries fund, see § 47-5-66.

Provisions of the Penitentiary-Made Goods Law, see §§ 47-5-301 et seq.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 180.

CJS. 18 C.J.S., Convicts §§ 23 et seq.

PRISON AGRICULTURAL ENTERPRISES

Sec.	
47-5-351.	State policy; legislative intent; mission.
47-5-353.	Definitions.
47-5-355.	Director of prison agricultural enterprises; duties and powers; records; annual report; joint ventures.
47-5-357.	Purchasing policy; items exempted from bid requirements.

§ 47-5-351. State policy; legislative intent; mission.

(1) It is the policy of the State of Mississippi that the Department of Corrections, to the extent practical, make maximum utilization of the farm lands of the various correctional institutions for the purpose of feeding inmates.

(2) It is the intent of the Legislature that the department grow, harvest and process those agricultural products that will directly assist in reducing the reliance of the department upon external sources of supply and that will facilitate the self-sufficiency of the inmates and the department.

(3) The Department of Corrections shall establish, implement and manage prison agricultural enterprises in a manner and form deemed appropriate to ensure a profitable farming operation and self-sufficiency in the feeding of the inmates.

(4) The Legislature finds that the mission of the prison agricultural enterprises is:

(a) To reduce the cost of state government by producing and processing food for use by inmates;

(b) To operate the program primarily with inmate labor;

(c) To serve the security goals of the department through the reduction of idleness of inmates;

(d) To produce and market agricultural products that will aid in maintaining a profitable agricultural operation to the extent possible.

SOURCES: Laws, 1992, ch. 506 § 1, eff from and after passage (approved May 15, 1992).

Cross References — Prison Agricultural Enterprises Fund, see § 47-5-66.

Noxubee County Prison Work Program to be established pursuant to §§ 47-5-451 through 47-5-469 in order to achieve legislative intent set out in this section, see § 47-5-1209.

§ 47-5-353. Definitions.

For the purpose of Sections 47-5-351 through 47-5-357, the following terms shall have the following meanings unless the context shall provide otherwise:

(a) "Agricultural commodities" means crops, vegetables, fruits, livestock, domesticated fish, fowl, seafood, animal husbandry, wood and the various processes that any of these commodities may go through subsequent to their removal from the soil or water.

(b) "Commissioner" means the Commissioner of Corrections;

(c) "Department" means the Department of Corrections;

(d) "Director" means the director of the prison agricultural enterprises;

(e) "Prison agricultural enterprises" means any program operated by the Department of Corrections including, but not limited to, the growing, harvesting, processing and marketing of crops, vegetables, fruits, livestock, domesticated fish, fowl and any product of agriculture, animal husbandry or aquaculture that may be used for the feeding of prisoners for the general welfare of the prisoners or profitably grown on department lands. This term includes any proper method of canning, freezing or preserving such products;

(f) "Products" means any item produced by prison agricultural enterprises.

SOURCES: Laws, 1992, ch. 506 § 2; Laws, 2001, ch. 339, § 1, eff from and after passage (approved Mar. 11, 2001.)

Cross References — Definition of "prison agricultural enterprises" for purposes of Mississippi Prison Industries Act of 1990, see § 47-5-539.

§ 47-5-355. Director of prison agricultural enterprises; duties and powers; records; annual report; joint ventures.

(1) The Commissioner of Corrections shall employ a director of the prison agricultural enterprises, who shall be directly responsible to the commissioner. The director shall have the following duties and powers:

(a) To implement and manage the prison agricultural enterprises;

(b) To determine, with the advice of the Director of Planning, the type of agricultural, animal husbandry and aquaculture products needed to feed inmates and which may be grown profitably on department lands;

(c) To use inmate labor to meet the labor needs of the programs, subject to the requirements of subsection (2);

(d) To recommend rules and regulations and employ personnel necessary for the operation of the programs;

(e) To determine the proper methods of canning, freezing or preserving that may be used to the best advantage of the programs;

(f) With approval of the commissioner, to do those things necessary and proper to accomplish the purposes of the programs;

(g) To determine and establish priorities on the most appropriate and profitable products to be grown and which department lands should be farmed, taking into consideration the available prison labor, existing equipment and funds available therefor, markets for the products, and other matters consistent with prudent agricultural practices;

(h) To manage the food services of the department at the discretion of the commissioner.

(2) The director shall have the right to use inmate labor to the exclusion of prison industries. The superintendents shall provide the prison agricultural enterprises with sufficient inmate labor. If a superintendent refuses to provide inmate labor because of security concerns, the commissioner shall decide if security requirements preclude use of inmate labor. Upon the request of the director, the superintendents shall provide security for prison agricultural enterprises.

(3) The director shall maintain accurate and complete financial records of all receipts and expenditures of the prison agricultural enterprise programs.

(4) The director shall file a full and complete report with the Legislature before January 1 of each year detailing the costs, inventory and receipts of each program. The report shall also provide the cost or cost savings of such programs.

(5) The department may enter into joint ventures with private businesses related to prison agricultural enterprises.

SOURCES: Laws, 1992, ch. 506 § 3, eff from and after passage (approved May 15, 1992).

§ 47-5-357. Purchasing policy; items exempted from bid requirements.

(1) Due to the unique and time sensitive requirements of growing and harvesting products produced by the prison agricultural enterprises, the Department of Finance and Administration and the department shall establish a prudent purchasing policy which may exempt from bid requirements those commodities, items or services which are needed for the efficient and effective management of the prison agricultural enterprises.

(2) The Department of Finance and Administration shall, by order entered on its minutes, list those commodities, items and services exempted from bid requirements as provided in Section 31-7-12, Mississippi Code of 1972.

SOURCES: Laws, 1992, ch. 506, § 4, eff from and after passage (approved May 15, 1992).

PUBLIC SERVICE WORK PROGRAMS

SEC.
47-5-401. Public service work programs; eligibility; limitation.
47-5-403. Definitions.
47-5-405. Joint state-county work programs; sheriff to adopt regulations.
47-5-407. Work camps.
47-5-409. Escapes.
47-5-411. Criteria for public service work.
47-5-413. Earned time credit.
47-5-415. Passes and leaves.
47-5-417. Status of participating inmate.
47-5-419. Delegation of functions.
47-5-421. Provisions cumulative.

§ 47-5-401. Public service work programs; eligibility; limitation.

(1) There is hereby authorized, in each county of the state, a public service work program for state inmates in custody of the county. Such a program may be established at the option of the county in accordance with the provisions of Sections 47-5-401 through 47-5-421. The department shall also recommend rules and regulations concerning the participation of state inmates in the program.

(2) An inmate shall not be eligible to participate in a work program established in accordance with the provisions of Sections 47-5-401 through 47-5-421 if he has been convicted of any crime of violence, including but not limited to murder, aggravated assault, rape, robbery or armed robbery.

(3) The inmates participating in the work program established in accordance with the provisions of Sections 47-5-401 through 47-5-421 are restricted to the performance of public service work for counties, municipalities, the state or nonprofit charitable organizations, as defined by Section 501(c)(3) of the Internal Revenue Code of 1986, except that the Department of Corrections must approve all requests by nonprofit charitable organizations to use offenders to perform any public service work. Upon request of the Board of Trustees of State Institutions of Higher Learning, or the board of trustees of a county school district, municipal school district or junior college district, the inmates may be permitted to perform work for such boards.

SOURCES: Laws, 1982, ch. 456, § 2; brought forward, Laws, 1984, ch. 471, § 89; reenacted, Laws, 1986, ch. 413, § 89; Laws, 1988, ch. 504, § 31; Laws, 1992, ch. 317, § 1; Laws, 1996, ch. 547, § 4; Laws, 2001, ch. 393, § 8, eff from and after July 1, 2001.

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Joint state-county work program, see §§ 47-5-451 et seq.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

ATTORNEY GENERAL OPINIONS

Under Section 47-5-401, the board of supervisors has no authority to control the placement of state inmates in the county jail. Welch, October 4, 1995, A.G. Op. #95-0656.

As long as the provisions Sections 21-19-11 and 47-5-401 are followed, a municipality may contract with the Mississippi Department of Corrections for the use of state inmates housed at community work centers to perform public service work such as the type authorized by Section 21-19-11 on private property. Trice, August 30, 1996, A.G. Op. #96-0467.

A state inmate who is in the custody of a county may be worked in a public service work program; however, such work program is restricted to the performance of public service work for counties, municipalities, the state, or nonprofit charitable organizations, as defined by Section 501(c)(3) of the Internal Revenue Code of 1986. Johnson, Jan. 7, 2000, A.G. Op. #99-0707.

A county board of supervisors is authorized to use community work release center prisoners to pick up county garbage and deposit it in county-operated garbage trucks for disposal. Shepard, Feb. 18, 2000, A.G. Op. #2000-0069.

Assuming that inmates are not performing their duties for a private contractor, a county school district may use inmates to clean and remove garbage at a school cafeteria. Mayfield, Apr. 27, 2001, A.G. Op. #01-0251.

A board of supervisors, by appropriate resolution, may establish joint work programs to be operated under the exclusive jurisdiction of the sheriff, and inmates participating in such a program may be housed in work camps in lieu of confinement in jail, which need not be within the corporate limits of the county seat. DeLaughter, Mar. 8, 2002, A.G. Op. #02-0042.

The Mississippi Department of Corrections is under no obligation to pay counties for the costs associated with the care of inmates participating in a joint state/county work program under Section 47-5-401(1). Epps, Feb. 28, 2003, A.G. Op. #03-0764.

County inmates in the custody of the sheriff would not be allowed to work on properties of a nonprofit charitable organization that does not provide food to charities. Griffith, Sept. 26, 2003, A.G. Op. 03-0496.

A court may authorize participants in a Community Service, Restitution and Work Program to perform work service for qualified nonprofit charitable organizations as defined by Section 501 (c)(3) of the Internal Revenue Code. Weathers, Dec. 27, 2005, A.G. Op. 05-0549.

RESEARCH REFERENCES

ALR. Computation of incarceration time under work-release or "hardship" sentences. 28 A.L.R.4th 1265.

Defendant's right to credit for time spent in halfway house, rehabilitation center, or similar restrictive environment as a condition of pretrial release. 29 A.L.R.4th 240.

Denial of state prisoner's application for, or revocation of, participation in work or study release program or furlough program as actionable under Civil Rights Act of 1871 (42 USCS § 1983). 55 A.L.R. Fed. 208.

§ 47-5-403. Definitions.

As used in Sections 47-5-401 through 47-5-421, the following words and terms have the meanings hereby ascribed to them:

(a) "County inmate" means a person convicted of a crime and sentenced to a term of confinement of one (1) year's duration or less.

(b) "State inmate" means a person convicted of a crime and sentenced to the custody of the Department of Corrections for a term of confinement of more than one (1) year's duration.

(c) "Department" means the Mississippi Department of Corrections.

SOURCES: Laws, 1982, ch. 456, § 1; brought forward, Laws, 1984, ch. 471, § 90; reenacted, Laws, 1986, ch. 413, § 90; Laws, 1988, ch. 504, § 32, eff from and after passage (approved May 6, 1988).

Editor's Note — Laws of 1984, ch. 471, § 128, provides for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — State Department of Corrections, generally, see §§ 47-5-8 et seq.

Commitment of offenders to custody of department of corrections, see § 47-5-110.

Joint state-county work program, see §§ 47-5-451 et seq.

§ 47-5-405. Joint state-county work programs; sheriff to adopt regulations.

Each county electing to establish a work program under Sections 47-5-401 through 47-5-421 is authorized through its sheriff to adopt regulations and policies for joint state-county work programs, including extending the limits of the place of confinement of an eligible inmate as to whom there is reasonable cause to believe he will know his trust.

Any rules, regulations or policies promulgated by the sheriff shall be filed with the board of supervisors, and shall be left on file for a minimum of thirty (30) days before any such rules, regulations or policies can be implemented or utilized for any inmate pursuant to the provisions of Sections 47-5-401 through 47-5-421. Provided further, such rules as they pertain to state inmates shall also be submitted to the Department of Corrections for approval which shall be granted or rejected within thirty (30) days of submission. If said rules are rejected the reasons therefor shall be stated in writing.

SOURCES: Laws, 1982, ch. 456, § 3; brought forward, Laws, 1984, ch. 471, § 91; reenacted, Laws, 1986, ch. 413, § 91; Laws, 1988, ch. 504, § 33, eff from and after passage (approved May 6, 1988).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Duties of sheriff with regard to jail prisoners, generally, see § 19-25-69.

Powers and duties of state board of corrections, generally, see § 47-5-20.

Work camps for participating inmates, see § 47-5-407.

Joint state-county work program, see §§ 47-5-451 et seq.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 162 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-407. Work camps.

Any county establishing a work program pursuant to Sections 47-5-401 through 47-5-421 may also establish a work camp to be used in carrying out the program, wherein inmates participating in the program may be housed in lieu of confinement in the county jail.

SOURCES: Laws, 1982, ch. 456, § 4; brought forward, Laws, 1984, ch. 471, § 92; reenacted, Laws, 1986, ch. 413, § 92, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Extending limits of place of confinement of eligible inmate, see § 47-5-405.

Joint state-county work program, see §§ 47-5-451 et seq.

ATTORNEY GENERAL OPINIONS

Sections 47-5-401 et. seq. particularly Section 47-5-407 allows any county with a work program to establish a work camp wherein inmates participating in the program may be housed in lieu of confinement in the jail. Such a camp need not be within the corporate limits of the county seat. Bradley, July 8, 1996, A.G. Op. #96-0335.

A board of supervisors, by appropriate resolution, may establish joint work programs to be operated under the exclusive jurisdiction of the sheriff, and inmates participating in such a program may be housed in work camps in lieu of confinement in jail, which need not be within the corporate limits of the county seat. DeLaughter, Mar. 8, 2002, A.G. Op. #02-0042.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-409. Escapes.

The willful failure of an inmate to remain within the extended limits of his confinement or to return to the place of confinement within the time prescribed shall be deemed an escape from a state penal institution in the case of a state inmate, and an escape from the custody of the sheriff in the case of a county inmate, and shall be punishable accordingly.

SOURCES: Laws, 1982, ch. 456, § 5; brought forward, Laws, 1984, ch. 471, § 93; reenacted, Laws, 1986, ch. 413, § 93, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Forfeiture of earned time in event of escape from state penal institution, see § 47-5-139.

Reward for apprehension of escaped state prisoner, see § 47-5-147.

Joint state-county work program, see §§ 47-5-451 et seq.

Penalties for state and county prisoners who escape from custody, see §§ 97-9-43 through 97-9-49.

RESEARCH REFERENCES

ALR. Failure of prisoner to return at expiration of work furlough or other permissive release period as crime of escape. 76 A.L.R.3d 658.

Temporary unauthorized absence of prisoner as escape or attempted escape. 76 A.L.R.3d 695.

Am Jur. 27A Am. Jur. 2d, Escape §§ 1 et seq.

60 Am. Jur. 2d, Penal and Correctional Institutions § 229.

§ 47-5-411. Criteria for public service work.

The Department of Corrections and the county shall endeavor to secure public service work for eligible inmates under Sections 47-5-401 through 47-5-421, subject to the following criteria:

(a) Such work shall not result in the displacement of employed workers.

(b) Inmates eligible for work shall not be employed to impair any existing contracts.

(c) Exploitation of eligible inmates, in any form, is prohibited either as it might affect the community, the inmates, the Department of Corrections or the county.

SOURCES: Laws, 1982, ch. 456, § 6; brought forward, Laws, 1984, ch. 471, § 94; reenacted, Laws, 1986, ch. 413, § 94; Laws, 1988, ch. 504, § 34, eff from and after passage (approved May 6, 1988).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Prohibition against using state prisoners as servants, see § 47-5-137.

§ 47-5-413. Earned time credit.

County inmates performing public service work under Sections 47-5-401 through 47-5-421 shall be eligible for earned time credit in the same manner as other inmates confined or detained in the county jail or other county correctional facility. State inmates performing public service work shall be eligible for earned time credit in the same manner as other inmates confined or detained in state prisons or other state correctional facilities.

SOURCES: Laws, 1982, ch. 456, § 7; brought forward, Laws, 1984, ch. 471, § 95; reenacted, Laws, 1986, ch. 413, § 95, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Earned time allowances for state inmates, see §§ 47-5-138, 47-5-139.

Joint state-county work program, see §§ 47-5-451 et seq.

JUDICIAL DECISIONS

1.-5. [Reserved for future use].
6. Under former § 47-5-171.

1.-5. [Reserved for future use].

6. Under former § 47-5-171.

In the absence of a clear statement of legislative intent to the contrary, a prisoner who has been released under a supervised earned release program and later apprehended for violation of the rules promulgated thereunder, is entitled to credit on his sentence for the period of time he was released under such program. Ivory v. State, 403 So. 2d 1284 (Miss. 1981).

RESEARCH REFERENCES

ALR. Computation of incarceration time under work-release or "hardship" sentences. 28 A.L.R.4th 1265.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 218-231.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 142-144, 146, 152.

§ 47-5-415. Passes and leaves.

The sheriff, in the case of county inmates and state inmates incarcerated in county jails, and the Commissioner of Corrections, in the case of state inmates incarcerated in a Mississippi Department of Corrections facility, may institute a procedure for granting passes and leaves to inmates participating under Sections 47-5-401 through 47-5-421, and may grant such passes or leaves in deserving cases, not to exceed three (3) days or seventy-two (72) hours.

SOURCES: Laws, 1982, ch. 456, § 8; brought forward, Laws, 1984, ch. 471, § 96; reenacted, Laws, 1986, ch. 413, § 96; Laws, 1986, ch. 427; Laws, 1988, ch. 504, § 35, eff from and after passage (approved May 6, 1988).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Leave for personal reasons for state inmates, see § 47-5-173. Joint state-county work program, see §§ 47-5-451 et seq.

§ 47-5-417. Status of participating inmate.

No inmate granted privileges under the provisions of Sections 47-5-401 through 47-5-421 shall be deemed to be an agent, employee or involuntary servant of the Department of Corrections, the state or any political subdivision thereof, while involved in the free community or while going to and from work or other specified areas or while on furlough pass.

SOURCES: Laws, 1982, ch. 456, § 9; brought forward, Laws, 1984, ch. 471, § 97; reenacted, Laws, 1986, ch. 413, § 97; Laws, 1988, ch. 504, § 36, eff from and after passage (approved May 6, 1988).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — Joint state-county work program, see §§ 47-5-451 et seq.

RESEARCH REFERENCES

ALR. Immunity of public officer from liability for injuries caused by negligently released individual. 5 A.L.R.4th 773.

Governmental tort liability for injuries caused by negligently released individual. 6 A.L.R.4th 1155.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq., 211-213.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 26, 50, 123, 124.

§ 47-5-419. Delegation of functions.

The sheriff may designate any officer or employee of the county to do and perform for the county any act or function Sections 47-5-401 through 47-5-421 empower the county to do or perform; provided, however, no elected official of the county shall be designated to do or perform any act or function for the county unless such elected officer is agreeable to being so designated.

The Commissioner of Corrections may designate any employee of the State Department of Corrections to do and perform for the department any act or function Sections 47-5-401 through 47-5-421 empower the department to do or perform.

SOURCES: Laws, 1982, ch. 456, § 10; brought forward, Laws, 1984, ch. 471, § 98; reenacted, Laws, 1986, ch. 413, § 98; Laws, 1988, ch. 504, § 37, eff from and after passage (approved May 6, 1988).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

Cross References — State Department and Board of Corrections, generally, see §§ 47-5-8 et seq.

Joint state-county work program, see §§ 47-5-451 et seq.

§ 47-5-421. Provisions cumulative.

The provisions of Sections 47-5-401 through 47-5-421 are cumulative and shall not be construed to repeal or supersede any laws directly inconsistent herewith; and it is specifically provided herein that any work program in operation or functioning pursuant to any local law when Sections 47-5-401 through 47-5-421 become law may be continued pursuant to such local law and shall not be affected in any way by Sections 47-5-401 through 47-5-421. The county conducting such program may, however, at its option convert the program to a program to be governed by Sections 47-5-401 through 47-5-421.

SOURCES: Laws, 1982, ch. 456, § 11; brought forward, Laws, 1984, ch. 471, § 99; reenacted, Laws, 1986, ch. 413, § 99, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1984, ch. 471, § 128, provided for an automatic repeal of this section from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986) repealed § 128 of ch. 471, Laws of 1984, thereby removing the repeal date.

USE OF PRISONERS IN COUNTY JAILS TO PICK UP TRASH

SEC.
47-5-431. Use of prisoners in county jails to pick up trash; earned time credit; escapes.
47-5-433. Use of State Highway vehicles to pick up trash bagged by inmates.

§ 47-5-431. Use of prisoners in county jails to pick up trash; earned time credit; escapes.

(1) The sheriff may, in his discretion, use any person who has been convicted of a nonviolent felony and who is serving all or any part of his sentence in the county jail to pick up trash along public roads and state highways within the county.

(2) County inmates performing work under this section shall be eligible for earned time credit in the same manner as state inmates. State inmates shall be eligible for earned time credit in the same manner as other inmates confined or detained in state prisons or other state correctional facilities.

(3) Any inmate escaping while participating in the work described herein shall receive an additional five-year sentence.

SOURCES: Laws, 1988, ch. 343, § 1, eff from and after July 1, 1988.

Cross References — Prisoners permitted to work on public roads or other public works, see § 47-1-9.

County prisoners may provide certain public service work, see § 47-1-41.

Use of offenders as servants prohibited, see § 47-5-137.

Use of prisoners in county jails to maintain certain historic cemeteries and serve food in conjunction with nonprofit organizations, see § 47-5-441.

RESEARCH REFERENCES

ALR. Failure of prisoner to return at expiration of work furlough or other permissive release period as crime of escape. 76 A.L.R.3d 658.

Sex discrimination in treatment of jail or prison inmates. 12 A.L.R.4th 1219.

Computation of incarceration time under work-release or "hardship" sentences. 28 A.L.R.4th 1265.

Denial of state prisoner's application for, or revocation of, participation in work or study release program or furlough program as actionable under Civil Rights Act of 1871 (42 USCS sec. 1983). 55 A.L.R. Fed. 208.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq., 222 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq., 142 et seq.

§ 47-5-433. Use of State Highway vehicles to pick up trash bagged by inmates.

The State Highway Commission may furnish vehicles along state highways to pick up trash bagged by inmates.

SOURCES: Laws, 1988, ch. 343, § 2, eff from and after July 1, 1988.

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

USE OF PRISONERS IN COUNTY JAILS TO MAINTAIN CERTAIN HISTORIC CEMETERIES AND SERVE FOOD IN CONJUNCTION WITH NONPROFIT ORGANIZATIONS

SEC.
47-5-441. Use of county prisoners to preserve and maintain certain historic cemeteries and use of county prison labor to prepare and serve food in county or public facilities in conjunction with certain nonprofit organizations.

§ 47-5-441. Use of county prisoners to preserve and maintain certain historic cemeteries and use of county prison labor to prepare and serve food in county or public facilities in conjunction with certain nonprofit organizations.

(1) Any sheriff, or his designee, may use any person who has been convicted of a nonviolent offense and who is serving all or any part of his sentence in the county jail to clear, clean, stabilize, preserve, maintain and restore historic cemeteries in the county. For the purposes of this section the term "historic cemeteries" means cemeteries that are at least one hundred (100) years old.

(2) Before undertaking work on an historic cemetery, the sheriff, or his designee, shall contact the Department of Archives and History to obtain information on the appropriate procedures for the preservation and restoration of an historical cemetery.

(3) Any sheriff, or his designee, may use any person who has been convicted of a crime and is serving all or part of his sentence in the county jail, who volunteers his time, to prepare or serve food in county or public facilities in conjunction with a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code.

SOURCES: Laws, 2003, ch. 532, § 1, eff from and after passage (approved Apr. 20, 2003.)

Cross References — Prisoners permitted to work on public roads or other public works, see § 47-1-9.

County prisoners may provide certain public service work, see § 47-1-41.

Use of offenders as servants prohibited, see § 47-5-137.

Use of prisoners in county jails to pick up trash, see §§ 47-5-431 et seq.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

ATTORNEY GENERAL OPINIONS

Pursuant to this section the sheriff may use county inmate labor to clear, clean, stabilize, preserve, maintain and restore historic cemeteries in the county, public or private. The board of supervisors may authorize the sheriff to use county equipment and property to repair and maintain historic cemeteries pursuant to G.S. 39-5-19. Brown, July 7, 2003, A.G. Op. 03-0284.

JOINT STATE-COUNTY WORK PROGRAM

SEC.
47-5-451. Joint state-county work programs; eligibility; limitations.
47-5-452. Offenders to clean up abandoned or neglected cemeteries and public roads of the county.
47-5-453. Adoption of regulations and policies.
47-5-455. Establishment of work camps.
47-5-457. Escapes.
47-5-459. Criteria for public service and private sector work.
47-5-461. Earned time credit.
47-5-463. Passes and leaves.
47-5-465. Status of participating inmate.
47-5-467. Delegation of functions.
47-5-469. Provisions cumulative.

§ 47-5-451. Joint state-county work programs; eligibility; limitations.

(1) There is hereby authorized, in each county of the state, a public service work program for state inmates in custody of the county. Such a program may be established at the option of the county in accordance with the provisions of

Sections 47-5-401 through 47-5-421. The department shall also recommend rules and regulations concerning the participation of state inmates in the program.

(2) An inmate shall not be eligible to participate in a work program established in accordance with the provisions of Sections 47-5-401 through 47-5-421, if he has been convicted of any crime of violence, including, but not limited to, murder, aggravated assault, rape, robbery or armed robbery.

(3) The inmates participating in the work program established in accordance with the provisions of Sections 47-5-401 through 47-5-421, are restricted to the performance of public service work for counties, municipalities, the state, nonprofit charitable organizations or churches, as defined by Section 501(c)(3) of the Internal Revenue Code of 1986, except that the Department of Corrections must approve all requests by nonprofit charitable organizations or churches to use offenders to perform any public service work. Upon request of the Board of Trustees of State Institutions of Higher Learning, or the board of trustees of a county school district, municipal school district or junior college district, the inmates may be permitted to perform work for such boards.

SOURCES: Laws, 1985, ch. 489, § 1; reenacted and amended, Laws, 1987, ch. 384, § 1; Laws, 1988, ch. 504, § 38; Laws, 1992, ch. 317, § 2; Laws, 1996, ch. 547, § 5; Laws, 2001, ch. 393, § 9; Laws, 2008, ch. 364, § 2, eff from and after July 1, 2008.

Editor's Note — Laws of 1985, ch. 489, § 11, provided for the repeal of the Joint State-County Work Program (§§ 47-5-451 through 47-5-469). Subsequently, Laws of 1987, ch. 384, § 11, amended Laws of 1985, ch. 489, § 11, by removing the repeal provision.

Cross References — Department of Corrections, see § 47-5-8.

Public service work program, see §§ 47-5-401 et seq.

Noxubee County Work Program established pursuant to the authority of §§ 47-5-451 through §§ 47-5-469, see § 47-5-1209.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

JUDICIAL DECISIONS

1. Work programs.

Without waiving the procedural bar to the inmate's claim that his sentence was unconstitutional, the court held that the inmate was properly charged under Miss. Code Ann. § 97-9-45 and entered a plea of guilty to the escape; the sentence of three years was well within the maximum prescribed by the statute, which referred to prisoners sentenced to the Mississippi Department of Corrections and allowed a maximum sentence of five years, and thus the inmate was not entitled to post-conviction relief; although the inmate was in custody and on a work program for a county at the time of the escape, the inmate was considered under the Department's jurisdiction for purposes of § 97-9-45 because (1) the inmate's original burglary sentence required imprisonment in the "penitentiary" under Miss. Code Ann. § 97-17-23, which term meant any facility under the jurisdiction of the Department pursuant to Miss. Code Ann. § 47-5-3, (2) commitment to any institution within the jurisdiction of the Department was to the Department, not a particular institution pursuant to Miss. Code Ann. § 47-5-110, and (3) under Miss. Code Ann. § 47-5-451, the Department recommended rules concerning the participation of inmates in work programs. Gardner v. State, 848 So. 2d 900 (Miss. Ct. App. 2003).

ATTORNEY GENERAL OPINIONS

The creation of Christmas ornaments for display on public streets and city property constitutes public service work but the creation of Christmas ornaments for advertisement and sale by cities to other cities or anyone in the private sector does not constitute public service work. Shepard, Dec. 18, 1991, A.G. Op. #91-0943.

Legislature intended that eligibility provision of Miss. Code § 47-5-451(2) exclude inmates who previously had been convicted of violent crimes, as well as those who were presently serving time for such convictions; further, this exclusion would apply to juveniles, only if they were tried and convicted as adults, but would not apply to juvenile delinquency adjudications. Lucas, Jan. 6, 1993, A.G. Op. #92-0977.

It was intended that eligibility provision of Miss. Code Section 47-5-45(2) [repealed] apply only to those work programs that are authorized and created under provisions of Miss. Code Section 47-5-451. Lucas, Jan. 6, 1993, A.G. Op. #92-0977.

A board of supervisors, by appropriate resolution, may establish joint work programs to be operated under the exclusive jurisdiction of the sheriff, and inmates participating in such a program may be housed in work camps in lieu of confinement in jail, which need not be within the corporate limits of the county seat. DeLaughter, Mar. 8, 2002, A.G. Op. #02-0042.

RESEARCH REFERENCES

ALR. Computation of incarceration time under work-release or “hardship” sentences. 28 A.L.R.4th 1265.

Defendant’s right to credit for time spent in halfway house, rehabilitation center, or similar restrictive environment as condition of pretrial release. 29 A.L.R.4th 240.

Denial of state prisoner’s application for, or revocation of, participation in work or study release program or furlough program as actionable under Civil Rights Act of 1871 (42 USCS § 1983). 55 A.L.R. Fed. 208.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 162 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-452. Offenders to clean up abandoned or neglected cemeteries and public roads of the county.

Upon written request by a majority of the board of supervisors of any county, the Commissioner of Corrections may authorize offenders committed to the custody of the Department of Corrections to clean abandoned or neglected cemeteries of the county or clean public roads of the county. The offenders shall be under the supervision of the department and the department shall establish all proper regulations for the working, guarding, safekeeping, clothing, housing and subsistence of offenders while working.

SOURCES: Laws, 1996, ch. 547, § 35, eff from and after passage (approved April 13, 1996).

Cross References — Prisoners permitted to work on public roads or other public works, see § 47-1-9.

USe of county prisoners to preserve and maintain certain historic cemeteries, see § 47-5-441.

§ 47-5-453. Adoption of regulations and policies.

Each county board of supervisors electing to establish a work program under Sections 47-5-451 through 47-5-469 shall adopt regulations and policies as authorized by the Department of Corrections for joint state-county work programs, including extending the limits of the place of confinement of an eligible inmate as to whom there is reasonable cause to believe he will know his trust. Extending the limits of the place of confinement may include confinement at the residence of the subject inmate wherein the primary maintenance and care of the inmate shall take place, subject to approval by the department and county.

Violations by inmates participating in such programs of any such rules, regulations or policies shall result in the ineligibility of the inmates to participate in such programs, and shall result in the inmate's immediate incarceration.

SOURCES: Laws, 1985, ch. 489; reenacted, Laws, 1987, ch. 384, § 2; Laws, 1988, ch. 504, § 39, eff from and after passage (approved May 6, 1988).

Cross References — Duties of sheriff with regard to jail prisoners, generally, see § 19-25-69.

Powers and duties of state board of corrections, generally, see § 47-5-20.

Public service work program, see §§ 47-5-401 et seq.

Work camps for participating inmates, see § 47-5-455.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-455. Establishment of work camps.

Any county board of supervisors establishing a work program pursuant to Sections 47-5-451 through 47-5-469 may also establish a work camp to be used in carrying out the program, wherein inmates participating in the program may be housed.

SOURCES: Laws, 1985, ch. 489, § 3; reenacted, Laws, 1987, ch. 384, § 3, eff from and after July 1, 1987.

Cross References — Public service work program, see §§ 47-5-401 et seq.

Extending limits of place of confinement of eligible inmate, see § 47-5-453.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-457. Escapes.

The willful failure of an inmate to remain within the extended limits of his confinement or to return to the place of confinement within the time prescribed shall be deemed an escape from a state penal institution and shall be punishable accordingly.

SOURCES: Laws, 1985, ch. 489, § 4; reenacted, Laws, 1987, ch. 384, § 4, eff from and after July 1, 1987.

Cross References — Forfeiture of earned time in event of escape from state penal institution, see § 47-5-139.

Reward for apprehension of escaped state prisoner, see § 47-5-147.

Public service work program, see §§ 47-5-401 et seq.

Penalties for state and county prisoners who escape from custody, see §§ 97-9-43 et seq.

RESEARCH REFERENCES

ALR. Failure of prisoner to return at expiration of work furlough or other permissive release period as crime of escape. 76 A.L.R.3d 658.

Temporary unauthorized absence of prisoner as escape or attempted escape. 76 A.L.R.3d 695.

Am Jur. 27A Am. Jur. 2d, Escape §§ 1 et seq.

60 Am. Jur. 2d, Penal and Correctional Institutions § 229.

§ 47-5-459. Criteria for public service and private sector work.

(1) Notwithstanding any other provisions of law to the contrary, the State Department of Corrections and the county board of supervisors shall endeavor to secure public service work or private paid employment for eligible inmates under Sections 47-5-451 through 47-5-469, subject to the following criteria:

(a) Such work shall not result in the displacement of employed workers.

(b) Inmates eligible for work shall not be employed to impair any existing contracts.

(c) Exploitation of eligible inmates, in any form, is prohibited either as it might affect the community, the inmates, the department or the county.

(2) In those cases in which inmates have been authorized to engage in paid employment in the private sector which has been approved by the Department of Corrections and a county board of supervisors electing to establish a work program under Sections 47-5-451 through 47-5-469, the disposition of funds received by such inmates shall be allocated by the Department of Corrections and the county board of supervisors. The guidelines

to be used in the allocation of such funds shall include consideration of the following:

(a) The cost of maintenance of the inmate in his place of confinement and reimbursement for same to the appropriate person or entity;

(b) The operating expenses and costs incurred by the county or Department of Corrections in operating such a work program and reimbursement to such county or to the department; and

(c) Restitution to any victim of the offense for which the inmate was convicted in such amounts and under such conditions as the sentencing court may have imposed.

SOURCES: Laws, 1985, ch. 489, § 5; reenacted, Laws, 1987, ch. 384, § 5; Laws, 1988, ch. 504, § 40; Laws, 1996, ch. 547, § 6, eff from and after passage (approved April 13, 1996).

Cross References — Prohibition against using state prisoners as servants, see § 47-5-137.

Public service work program, see §§ 47-5-401 et seq.

ATTORNEY GENERAL OPINIONS

A board of supervisors, by appropriate resolution, may establish joint work programs to be operated under the exclusive jurisdiction of the sheriff, and inmates participating in such a program may be housed in work camps in lieu of confinement in jail, which need not be within the corporate limits of the county seat. DeLaughter, Mar. 8, 2002, A.G. Op. #02-0042.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-461. Earned time credit.

State inmates performing public service work or private paid employment under Sections 47-5-451 through 47-5-469 shall be eligible for earned time credit allowances in the same manner as other inmates confined or detained in state prisons or other state correctional facilities.

SOURCES: Laws, 1985, ch. 489, § 6; reenacted, Laws, 1987, ch. 384, § 6, eff from and after July 1, 1987.

Cross References — Earned time allowances for state inmates, see §§ 47-5-138, 47-5-139.

Public service work program, see §§ 47-5-401 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former § 47-5-171.

6. In general.

I. Under Current Law.

1. In general.

A habeas corpus petitioner who had been a death row inmate, and as such had not been eligible for earned time credit, was entitled to full earned time credit for the years of incarceration on death row where (1) his conviction and sentence were found to be illegal, (2) he subsequently pleaded guilty to manslaughter, and (3) he received a 20-year sentence. Voyles v. State, 520 So. 2d 501 (Miss. 1988).

2.-5. [Reserved for future use].

II. Under Former § 47-5-171.

6. In general.

In the absence of a clear statement of legislative intent to the contrary, a prisoner who has been released under a supervised earned release program and later apprehended for violation of the rules promulgated thereunder, is entitled to credit on his sentence for the period of time he was released under such program. Ivory v. State, 403 So. 2d 1284 (Miss. 1981).

RESEARCH REFERENCES

ALR. Computation of incarceration time under work-release or "hardship" sentences. 28 A.L.R.4th 1265.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 218-231.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 142-144, 146, 152.

§ 47-5-463. Passes and leaves.

The Commissioner of Corrections may institute a procedure for granting passes and leaves to inmates participating under Sections 47-5-451 through 47-5-469, and may grant such passes or leaves in deserving cases, not to exceed three (3) days or seventy-two (72) hours.

SOURCES: Laws, 1985, ch. 489, § 7; reenacted, Laws, 1987, ch. 384, § 7; Laws, 1988, ch. 504, § 41, eff from and after passage (approved May 6, 1988).

Cross References — Leave for personal reasons for state inmates, see § 47-5-173. Public service work program, see §§ 47-5-401 et seq.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-465. Status of participating inmate.

No inmate granted privileges under Sections 47-5-451 through 47-5-469 shall be deemed to be an agent, employee or involuntary servant of the Department of Corrections, any county board of supervisors, the state or any political subdivision thereof, while involved in the free community or while going to and from work or other specified areas or while on furlough pass.

SOURCES: Laws, 1985, ch. 489, § 8; reenacted, Laws, 1987, ch. 384, § 8; Laws, 1988, ch. 504, § 42, eff from and after passage (approved May 6, 1988).

RESEARCH REFERENCES

ALR. Immunity of public officer from liability for injuries caused by negligently released individual. 5 A.L.R.4th 773.

Governmental tort liability for injuries caused by negligently released individual. 6 A.L.R.4th 1155.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 162, 211-213.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 26, 50, 123, 124.

§ 47-5-467. Delegation of functions.

The Commissioner of Corrections may designate any employee of the department to do and perform for the department any act or function which Sections 47-5-451 through 47-5-469 empower the department to do or perform.

SOURCES: Laws, 1985, ch. 489, § 9; reenacted, Laws, 1987, ch. 384, § 9; Laws, 1988, ch. 504, § 43, eff from and after passage (approved May 6, 1988).

Cross References — State department and board of corrections, generally, see §§ 47-5-8 et seq.

Public service work program, see §§ 47-5-401 et seq.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

§ 47-5-469. Provisions cumulative.

The provisions of Sections 47-5-451 through 47-5-469 of this chapter are cumulative and shall not be construed to repeal or supersede any laws directly inconsistent herewith; and it is specifically provided herein that any work program in operation or functioning pursuant to any local law when Sections 47-5-451 through 47-5-469 of this chapter become law may be continued pursuant to such local law and shall not be affected in any way by Sections 47-5-451 through 47-5-469 of this chapter. The county board of supervisors conducting such program may, however, at its option, convert the program to a program to be governed by Sections 47-5-451 through 47-5-469.

SOURCES: Laws, 1985, ch. 489, § 10; reenacted, Laws, 1987, ch. 384, § 10, eff from and after July 1, 1987.

Cross References — Public service work program, see §§ 47-5-401 et seq.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.

CJS. 72 C.J.S., Prisons and Rights of Prisoners §§ 17, 21 et seq.

CORRECTIONAL INDUSTRIES WORK PROGRAMS

Sec.
47-5-501. Legislative intent.
47-5-503. Repealed.
47-5-505. Selection and evaluation of suitable industries; negotiation of leases and other agreements; ratification.
47-5-507. Vocational training of offenders; employment subsequent to release.
47-5-509. Security for facilities; employment status of offenders.
47-5-511. Repealed.
47-5-513. Disposition of funds received.
47-5-515. Work training programs for offenders in trades for which there is a shortage of workers; cooperation with private industry.
47-5-517. Work program for data processing entry at Central Mississippi Correctional Facility.

§ 47-5-501. Legislative intent.

Except as otherwise specifically provided by law, it is hereby declared to be the intent of the Legislature to provide vocational education and training for offenders in the custody of the Mississippi Department of Corrections and simultaneously reimburse the state for the expenses of incarcerating such offenders. To implement this goal, the Legislature intends for the Department of Corrections to work in conjunction with private industry to locate viable industries and businesses on property utilized by the State Prison Correctional System and utilize offenders in the custody of the Department of Corrections as the labor force necessary to conduct their operations.

SOURCES: Laws, 1983, ch. 409, § 1; Laws, 1996, ch. 547, § 7, eff from and after passage (approved April 13, 1996).

Cross References — Mississippi Prison Industries Act of 1990, see § 47-5-531.

Authorization to transfer and expend monies from Prison Industries Fund to carry out purposes of sections 47-5-301 et seq., and 47-5-501 et seq., see § 47-5-565.

ATTORNEY GENERAL OPINIONS

So long as the provision of this section and Section 21-19-11 are followed, a municipality may contract with the Mississippi Department of Corrections to use inmate labor for public service work such as the cleaning of private property under Section 21-19-11. Pierce, Dec. 19, 1997, A.G. Op. #97-0676.

RESEARCH REFERENCES

ALR. Computation of incarceration time under work-release or "hardship" sentences. 28 A.L.R.4th 1265.

Defendant's right to credit for time spent in halfway house, rehabilitation center, or similar restrictive environment as a condition of pretrial release. 29 A.L.R.4th 240.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 22, 176-180.

§ 47-5-503. Repealed.

Repealed by Laws 1990, ch. 534, § 28, eff from and after passage (approved April 4, 1990).

[Laws, 1983, 409, § 2; Laws, 1988, ch. 518, § 23]

Editor's Note — Former section 47-5-503 provided that the department of corrections was to implement and administer correctional industries work programs, and for the participation of other agencies. For provisions governing prison industries work programs, see §§ 47-5-531 through 47-5-575.

§ 47-5-505. Selection and evaluation of suitable industries; negotiation of leases and other agreements; ratification.

(1) Except as otherwise specifically provided by law, the Department of Economic Development, and the Mississippi State University Cooperative Extension Service shall collaborate with the Department of Corrections in an initial evaluation of viable industries and businesses readily found in the present economy and a determination of which of these would effectively function within the correctional industries work program. Special consideration shall be given to those industries and businesses which will provide vocational education and training for offenders so as to assist offenders in functioning more successfully following their release from custody.

(2) Except as otherwise specifically provided by law, in conjunction with the initial evaluation and determination described in subsection (1) of this section, the Department of Economic Development shall have the primary responsibility of identifying and evaluating acceptable industries and businesses and of acting as an agent of the Department of Corrections by communicating with such concerns and aggressively soliciting their participation in the correctional industries work program.

(3) Except as otherwise specifically provided by law, after an acceptable industry or business has expressed an interest in participating in the correctional industries work program, the Department of Corrections shall negotiate any necessary contractual agreements and arrangements between the concern and the Department of Corrections, including (a) leases of up to twenty-five (25) years, renewable at the option of the lessee for an additional ten-year period at the end of each lease term, of any property utilized by the state prison correctional system, and (b) authorization for such industry or business to develop leased property in a manner necessary to conduct the operation or project.

(4) Except as otherwise specifically provided by law, any contracts concerning the leasing of real property by the Board of Corrections, any rules and regulations promulgated by the board and the making of any contract by the Department of Corrections with any private business shall be ratified and approved by the Governor's Office of General Services.

SOURCES: Laws, 1983, ch. 409, §§ 3, 10; Laws, 1984, ch. 488, § 230; Laws, 1988, ch. 518, § 24; Laws, 1996, ch. 547, § 8, eff from and after passage (approved April 13, 1996).

Editor's Note — Section 57-1-2 provides that the term "Board of Economic Development" shall mean the "Mississippi Development Authority".

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Creation of the office of general services, see § 7-1-451.

Duty of Department of Community and Economic Development to assist Department of Corrections in selection and evaluation of suitable industries, see § 57-1-55.

§ 47-5-507. Vocational training of offenders; employment subsequent to release.

The participating industry or business shall be responsible for providing the offenders with any vocational education or training necessary for employment. Upon an offender's release from custody, the participating industry or business may offer such offender a similar employment opportunity at a free-world location or facility operated by the industry or business.

SOURCES: Laws, 1983, ch. 409, § 4, eff from and after July 1, 1983.

§ 47-5-509. Security for facilities; employment status of offenders.

The department of corrections shall at all times be responsible for the security of the facility being used for the operation or project. No offender granted privileges under the provisions of Section 47-5-501 et seq. shall be deemed to be an agent, employee, or involuntary servant of the participating industry or business while working in the correctional industries work program, or while going to and from employment or other specified areas.

SOURCES: Laws, 1983, ch. 409, § 5, eff from and after July 1, 1983.

§ 47-5-511. Repealed.

Repealed by Laws 1990, ch. 534, § 28, eff from and after passage (approved April 4, 1990).

[Laws, 1983, ch. 409, § 6]

Editor's Note — Former section 47-5-511 provided for the selection of offenders eligible to participate in the program.

§ 47-5-513. Disposition of funds received.

Except as otherwise specifically provided by law, proceeds of funds paid by industries or businesses participating in the correctional industries work program shall be paid into the special fund in the State Treasury to the credit of the Department of Corrections for the operating expenses of the department.

SOURCES: Laws, 1983, ch. 409, § 7; Laws, 1996, ch. 547, § 9, eff from and after passage (approved April 13, 1996).

Cross References — Reporting requirements and disposition of funds received by state officials, see § 7-9-21.

§ 47-5-515. Work training programs for offenders in trades for which there is a shortage of workers; cooperation with private industry.

(1) The Department of Corrections shall establish work training programs in conjunction with private industry to provide training to offenders in those trades in which there is a shortage of workers.

(2) The commissioner may cooperate with private industry for the establishment of work training programs.

(3) Private industry shall provide the training at state correctional facilities.

SOURCES: Laws, 1999, ch. 567, § 1, eff from and after July 1, 1999.

§ 47-5-517. Work program for data processing entry at Central Mississippi Correctional Facility.

The Department of Corrections shall contract with the Department of Economic and Community Development for a training and work program for inmates to perform data processing entry at the Central Mississippi Correctional Facility.

SOURCES: Laws, 1999, ch. 586, § 1, eff from and after passage (approved April 22, 1999

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the section's subsection designators. The subsection number "(1)" at the beginning of the section was deleted. The Joint Committee ratified the correction at its August 5, 2008, meeting.

MISSISSIPPI PRISON INDUSTRIES ACT OF 1990

SEC.
47-5-531. Short title of Sections 47-5-531 through 47-5-575.
47-5-533. Legislative findings.
47-5-535. Legislative intent.

47-5-537. Formation of nonprofit corporation; programs of Division of Vocational Rehabilitation not to be prison industries.
47-5-539. Definitions.
47-5-541. Board of directors of corporation; chief executive officer; industry advisory board; compensation of directors; rules and regulations; duties of chief executive officer.
47-5-543. Lease of existing prison industries to corporation; exception for agricultural enterprises land, equipment, etc.
47-5-545. Procedures for establishing new prison industries.
47-5-547. Training programs or auxiliary programs associated with prison industries.
47-5-549. Entities to whom prison made goods or services may be sold; purchases of raw materials; prices of goods or services.
47-5-551. Property of prison industry program reverts to department upon dissolution or expiration of lease.
47-5-553. Chief executive officer of corporation to communicate with Commissioner of Corrections regarding security at facility; communication as to needed improvements.
47-5-555. Use of inmate labor.
47-5-557. Inmate not agent, employee or involuntary servant of corporation; exception.
47-5-559. Annual report on status of correctional work programs; financial statements; audit of corporation.
47-5-561. Authority of corporation to request appropriations from general fund; repayment of funds; funds to be maintained in interest-bearing accounts.
47-5-563. Department may adopt rules governing use of inmates by corporation; corporation to establish policies relating to use of inmates; filing of rules and policies.
47-5-565. Corporation to authorize expenditures from Prison Industries Fund.
47-5-567. Inmates ineligible for unemployment compensation or worker's compensation.
47-5-569. Department to lease all or none of work programs at any one correctional institution; disposition of rent paid by corporation; approval of leases.
47-5-571. Unauthorized sales of prison-made goods or services prohibited.
47-5-572. Repealed.
47-5-573. Master plan for correctional work programs; needs of corporation considered in assigning and transferring prisoners.
47-5-575. Records of corporation subject to public records act.
47-5-577. Repealed.

§ 47-5-531. Short title of Sections 47-5-531 through 47-5-575.

Sections 47-5-531 through 47-5-575 shall be known as the "Mississippi Prison Industries Act of 1990."

SOURCES: Laws, 1990, ch. 534, § 1; reenacted without change, Laws, 1996, ch. 547, § 10, eff from and after passage (approved April 13, 1996).

Cross References — Penitentiary-made Goods Law of 1978, see §§ 47-5-301 et seq.
Correctional Industries Work Programs, see § 47-5-501.
Prison Industry Enhancement Program, see § 47-5-1251.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 22, 176-180.

§ 47-5-533. Legislative findings.

(1) It is the finding of the Legislature that prison industry programs of the State Department of Corrections are uniquely different from other programs operated or conducted by other departments in that it is essential to the state that the prison industry programs provide inmates with useful activities that can lead to meaningful employment after release in order to assist in reducing the return of inmates to the system.

(2) It is further the finding of the Legislature that the mission of a prison industry program is:

(a) To reduce the cost of state government by operating prison industries primarily with inmate labor, which industries do not seek to unreasonably compete with private enterprise;

(b) To serve the rehabilitative goals of the state by duplicating as nearly as possible, the operating activities of a free-enterprise type of profit-making enterprise; and

(c) To serve the security goals of the state by reducing the idleness of inmates and by providing an incentive for good behavior while in prison.

SOURCES: Laws, 1990, ch. 534, § 2; reenacted without change, Laws, 1996, ch. 547, § 11, eff from and after passage (approved April 13, 1996).

Cross References — Department of Corrections, see § 47-5-8.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 22, 176-180.

§ 47-5-535. Legislative intent.

(1) Except as otherwise specifically provided by law, it is the intent of the Legislature that a nonprofit corporation be organized and formed, within sixty (60) days from April 4, 1990, to lease and manage the prison industry programs of the Mississippi Correctional Industries. The corporation created and established shall be a body politic and corporate, may acquire and hold real and personal property, may receive, hold and dispense monies appropriated to it by the Legislature of the State of Mississippi received from the federal government, received from the sale of products, goods, and services which it produces, and received from any other sources whatsoever.

(2) Except as otherwise specifically provided by law, it is the further intent of the Legislature that the nonprofit corporation shall create any additional prison industry program as it deems fit, and any such program shall

be created in compliance with the provisions of Sections 47-5-531 through 47-5-575.

(3) Except as otherwise specifically provided by law, it is the further intent of the Legislature that such nonprofit corporation shall have exclusive rights to operate any prison industry program and when such corporation is lawfully formed, no other public or private entity shall be allowed to carry out the provisions of Sections 47-5-531 through 47-5-575.

(4) It is the further intent of the Legislature, that the nonprofit corporation which is required to be organized and formed under Sections 47-5-531 through 47-5-575 shall locate and operate prison industries at any state correctional facility with the approval of the Commissioner of Corrections. It is the intent of the Legislature that the nonprofit corporation locate and operate such industries in an orderly and expeditious manner. Such corporation may locate and operate prison industries at other prison satellites, at community work centers in the state, at any private correctional facility which houses state inmates and at any regional correctional facility as authorized under Section 47-5-931. No industrial prison program shall be located at a site other than state prison facilities approved by the commissioner.

(5) It is the further intent of the Legislature that the nonprofit corporation shall not have any rights to operate a program under the prison agricultural enterprises and shall not create a prison industry program that duplicates a prison agricultural enterprises program or product.

(6) It is the further intent of the Legislature that the department retain exclusive rights to conduct all prison agricultural and related enterprises.

SOURCES: Laws, 1990, ch. 534, § 3; Laws, 1992, ch. 506, § 7; reenacted and amended, Laws, 1996, ch. 547, § 12; Laws, 1997, ch. 530, § 1, eff from and after passage (approved April 10, 1997).

Cross References — Prison Industries Fund, see § 47-5-66.

Allocation of one-half of proceeds of Inmate Welfare Fund for use by corporation established under this section, see § 47-5-158.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 22, 176-180.

§ 47-5-537. Formation of nonprofit corporation; programs of Division of Vocational Rehabilitation not to be prison industries.

The Secretary of State, or his designee, shall assist the Department of Corrections and the Department of Finance and Administration in the formation of the nonprofit corporation, and within sixty (60) days after the formation of the corporation, the corporation shall apply for exemption from federal tax under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Any program of the Division of Vocational Rehabilitation of the

State Department of Human Services shall not be classified as prison industries under the provisions of Sections 47-5-531 through 47-5-575.

SOURCES: Laws, 1990, ch. 534, § 4; reenacted without change, Laws, 1996, ch. 547, § 13, eff from and after passage (approved April 13, 1996).

Cross References — Secretary of State, see § 7-3-5.

Department of Finance and Administration, see § 27-104-1.

Rehabilitation services of State Department of Rehabilitation Services, see § 37-33-157.

Department of Corrections, see § 47-5-8.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

ATTORNEY GENERAL OPINIONS

Participants of the Prison Industry Enhancement (PIE) program are employees not of the Mississippi Prison Industries Corporation, but may be considered employees of the private employers with which the Mississippi Department of Corrections contracts for workers' compensation purposes and, therefore, the Mississippi State Agencies Self-Insured Workers' Compensation Trust cannot extend workers' compensation coverage to those inmates participating in the PIE program. Self, May 5, 2000, A.G. Op. #2000-0189.

§ 47-5-539. Definitions.

For the purposes of Sections 47-5-531 through 47-5-575, the following terms shall have the following meanings unless the context shall provide otherwise:

(a) "Corporation" means the private nonprofit corporation which is required to be organized and formed to carry out the provisions of Sections 47-5-531 through 47-5-575 regarding prison industries.

(b) "Department" means the State Department of Corrections.

(c) "Inmate" means any person incarcerated within any state correctional facility.

(d) "Prison industry program" means any program which is considered to be a part of any prison industry in this state.

(e) "Prison agricultural enterprises" means all agricultural endeavors as defined in Section 47-5-353.

SOURCES: Laws, 1990, ch. 534, § 5; Laws, 1992, ch. 506, § 8; reenacted without change, Laws, 1996, ch. 547, § 14, eff from and after passage (approved April 13, 1996).

Cross References — Department of Corrections, see § 47-5-8.

Definition of "prison agricultural enterprises" for the purposes of §§ 47-5-351 through 47-5-357, see § 47-5-353.

§ 47-5-541. Board of directors of corporation; chief executive officer; industry advisory board; compensation of directors; rules and regulations; duties of chief executive officer.

(1) The corporation shall be governed by a board of directors. The board of directors of the nonprofit corporation shall be composed of the following eleven (11) members who shall be appointed by the Governor with the advice and consent of the Senate: one (1) representative of the manufacturing industry, one (1) representative of the agriculture industry, one (1) representative of the banking and finance industry, one (1) representative of the labor industry, one (1) representative from the marketing industry and six (6) members from the state at large. In addition, the State Commissioner of Corrections and the President of Mississippi Delta Community College shall be ex officio members of the board of directors with full voting privileges. In making initial appointments, three (3) members shall be appointed for a term of two (2) years; four (4) members shall be appointed for a term of three (3) years; and four (4) members shall be appointed for a term of four (4) years; to be designated by the Governor at the time of appointment; and all succeeding terms shall be for four (4) years from the expiration date of the previous term. Initial appointments shall be made within thirty (30) days after passage of Sections 47-5-531 through 47-5-575. Any vacancy shall be filled by the Governor, with the advice and consent of the Senate. The officers of the corporation shall consist of a chairman, vice chairman and a secretary-treasurer. The officers shall be selected by the members of the board. However, the Commissioner of Corrections and the President of Mississippi Delta Community College shall not be eligible to serve as an officer of the corporation.

(2) The board of directors shall select and employ a chief executive officer of the corporation who shall serve at the pleasure of the board. The board shall set the compensation of the chief executive officer. The chief executive officer shall be responsible for the general business and entire operations of the corporation, and shall be responsible for operating the corporation in compliance with the bylaws of the corporation and in compliance with any provision of law. The board shall be authorized and empowered to do only those acts provided by law and by the bylaws of the corporation. Except as otherwise specifically provided by law, such board shall have the authority to establish prison industries, to cease the operation of any industry which it deems unsuitable or unprofitable, to enter into any lease or contract for the corporation and it shall have the full authority to establish prices for any industry good.

(3) No member of the board of directors shall vote on any matter that comes before the board that could result in pecuniary benefit for himself or for any entity in which such member has an interest.

(4) In addition to the board of directors, an advisory board may be set up for the benefit of each industry which is established pursuant to the provisions of Sections 47-5-531 through 47-5-575. Such boards shall be advisory only, and may be set up in the discretion of the board of directors of the corporation.

(5) Each member of the board of directors of the corporation shall receive per diem as provided in Section 25-3-69 for each day or fraction thereof spent in actual discharge of his official duties and shall be reimbursed for mileage and actual expenses incurred in the performance of his official duties in accordance with the requirements of Section 25-3-41, Mississippi Code of 1972.

(6) The board of directors shall make and publish policies, rules and regulations governing all business functions, including but not limited to accounting, marketing, purchasing and personnel, not inconsistent with the terms of Sections 47-5-531 through 47-5-575, as may be necessary for the efficient administration and operation of the corporation.

(7) The chief executive officer of the corporation shall:

(a) Employ all necessary employees of the corporation and dismiss them as is necessary;

(b) Administer the daily operations of the corporation;

(c) Upon approval of the board of directors, execute any contracts on behalf of the corporation; and

(d) Take any further actions which are necessary and proper toward the achievement of the corporation purposes.

(8) A member of the board of directors of the corporation shall not be liable for any civil damages for any personal injury or property damage caused to a person as a result of any acts or omissions committed in good faith in the exercise of their duties as members of the board of directors of the corporation, except where a member of the board engages in acts or omissions which are intentional, willful, wanton, reckless or grossly negligent.

SOURCES: Laws, 1990, ch. 534, § 6; reenacted and amended, Laws, 1996, ch. 547, § 15; Laws, 2007, ch. 415, § 1, eff from and after July 1, 2007.

Cross References — State Commissioner of Corrections, see § 47-5-24.

§ 47-5-543. Lease of existing prison industries to corporation; exception for agricultural enterprises land, equipment, etc.

(1) Within sixty (60) days after the formation of the corporation pursuant to the provisions of Section 47-5-535, the State Department of Corrections shall lease to the corporation all existing prison industries including the buildings, land, furnishings, equipment and other chattel used in the operation of such industries. Such lease shall be agreed upon by the State Department of Corrections, State Department of Finance and Administration and the corporation. The initial term of such lease shall not exceed six (6) years, provided that such lease may be renewed for additional successive terms of years not to exceed six (6) years in any one (1) renewal. No sublease to the corporation shall be in excess of that amount for which the department is obligated to pay under any lease agreement with any other state agency. Any receivable and remaining funds shall be transferred to the corporation after the payment of any existing liabilities. No operating loss of any type shall be transferred to the corporation. The State Department of Corrections shall continue to manage

and operate the prison industries until such industries are leased to the corporation. When leasing any prison industry program to the corporation, the corporation shall exercise a reasonable effort to employ any personnel of the State Department of Corrections who are currently involved in any prison industry program being leased to the corporation. Before the leasing of the prison industries, buildings, lands and other items mentioned herein to the corporation, the State Auditor of Public Accounts shall perform a comprehensive audit of all the items and things mentioned herein which are to be leased by the department to the corporation. The corporation may expand, eliminate, suspend or alter any of its industries as it sees fit.

(2) Any lands, buildings, equipment, furnishings, livestock, supplies and vehicles used in the department's farming operations which were leased or transferred to the nonprofit corporation under subsection (1) shall be transferred to the department. Any personnel in the department's farming operations employed by the nonprofit corporation who desire to be reassigned to the department and who are under state service may be reassigned to the department.

(3) The department is not required to lease land, buildings, equipment, furnishings or other chattel used in its prison agricultural enterprises.

SOURCES: Laws, 1990, ch. 534, § 7; Laws, 1992, ch. 506 § 9; reenacted without change, Laws, 1996, ch. 547, § 16; Laws, 2001, ch. 434, § 1, eff from and after Mar. 14, 2001.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Department of Finance and Administration, see § 27-104-1.

Department of Corrections, see § 47-5-8.

Prison agricultural enterprises, see §§ 47-5-351 et seq.

§ 47-5-545. Procedures for establishing new prison industries.

Except as otherwise specifically provided by law, after the commissioning and implementation of a marketing feasibility study for any proposed new prison industry, the corporation may establish such prison industry. Before any new industry is established, the corporation shall hold a hearing to determine the impact such industry may have on the private sector market. The corporation shall provide adequate and advance notice regarding the nature, time, date and place of such hearing. After the hearing which is required under this section, the corporation may commence negotiations with the State Department of Corrections, with the Secretary of State, or his designee, serving as a mediator, regarding the leasing of land and other chattels for the purpose of establishing any new industry.

SOURCES: Laws, 1990, ch. 534, § 8; reenacted and amended, Laws, 1996, ch. 547, § 17, eff from and after passage (approved April 13, 1996).

Cross References — Secretary of State, see § 7-3-5.
Department of Corrections, see § 47-5-8.

§ 47-5-547. Training programs or auxiliary programs associated with prison industries.

Except as otherwise specifically provided by law, any training program or auxiliary program associated with any existing prison industry shall be transferred to the corporation. The corporation is empowered and authorized to establish in participation with the Mississippi Delta Community College, any training or auxiliary program for existing prison industries or for any industries which the corporation might create. Mississippi Delta Community College shall provide assistance in business planning, marketing and analysis of existing or projected industries. These industrial services shall be contracted with appropriate community colleges when these industries are developed at other correction sites.

SOURCES: Laws, 1990, ch. 534, § 9; reenacted and amended, Laws, 1996, ch. 547, § 18, eff from and after passage (approved April 13, 1996).

§ 47-5-549. Entities to whom prison made goods or services may be sold; purchases of raw materials; prices of goods or services.

Any service or item manufactured, processed, grown or produced by the corporation from its prison industries may be furnished or sold to any legislative, executive or judicial branch of the state, any political subdivision or any governing authority of the state, any other state, any school, college or university of the state, any foreign government, any agency of the federal government or to any private entity. The corporation shall make reasonable efforts to purchase raw materials from in-state vendors. The prices for industry-made products shall be established by the board of directors of the corporation or its designee.

SOURCES: Laws, 1990, ch. 534, § 10; reenacted without change, Laws, 1996, ch. 547, § 19, eff from and after passage (approved April 13, 1996).

Cross References — Penitentiary-made Goods Law of 1978, see §§ 47-5-301 et seq.

§ 47-5-551. Property of prison industry program reverts to department upon dissolution or expiration of lease.

In the event the corporation is dissolved or its lease of any prison industry program expires or is otherwise terminated, all property relating to such prison industry program which ceases to function because of such termination or dissolution, including all funds, buildings, land, furnishings, equipment and other chattels subsequently purchased or otherwise acquired by the corporation in connection with its continued operation of that program, automatically reverts to full ownership by the department.

SOURCES: Laws, 1990, ch. 534, § 11; reenacted without change, Laws, 1996, ch. 547, § 20, eff from and after passage (approved April 13, 1996).

§ 47-5-553. Chief executive officer of corporation to communicate with Commissioner of Corrections regarding security at facility; communication as to needed improvements.

Before any prison industry may commence operations, the chief executive officer of the corporation must communicate with the Commissioner of Corrections regarding the proper security for the facility. If at anytime the Commissioner of Corrections recognizes a need for improvement in the security at any facility, then he or she shall communicate to the corporation regarding what improvements are needed for the facility to be properly secured. The corporation shall furnish its own security within the parameters of any prison industry work area.

SOURCES: Laws, 1990, ch. 534, § 12; reenacted without change, Laws, 1996, ch. 547, § 21; Laws, 2007, ch. 421, § 1, eff from and after July 1, 2007.

§ 47-5-555. Use of inmate labor.

The department shall, subject to the necessary security requirements and the needs of the corporation, provide to the corporation sufficient inmate labor for the various prison industry programs. The department may adopt rules and regulations as may be necessary to govern the use of inmates by the corporation. The corporation shall establish policies and procedures, subject to the approval of the department, relating to the use of inmates in the prison industry programs.

SOURCES: Laws, 1990, ch. 534, § 13; reenacted without change, Laws, 1996, ch. 547, § 22, eff from and after passage (approved April 13, 1996).

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 22, 176-180.

§ 47-5-557. Inmate not agent, employee or involuntary servant of corporation; exception.

Any inmate who performs work for the corporation, except those inmates employed by the corporation in the Prison Industry Enhancement Program under Section 47-5-1251, shall not be deemed an agent, employee or involuntary servant of the corporation while performing such work or while going to and from work or other specified areas.

SOURCES: Laws, 1990, ch. 534, § 14; reenacted without change, Laws, 1996, ch. 547, § 23; Laws, 2001, ch. 434, § 2, eff from and after Mar. 14, 2001.

Editor's Note — This section was reenacted without change by Laws of 1995, ch. 547, § 23, eff from and after passage (approved April 13, 1996).

Cross References — Employment of offenders within the custody of the department or prison industries through the Prison Industry Enhancement Program, see § 47-5-1251.

§ 47-5-559. Annual report on status of correctional work programs; financial statements; audit of corporation.

The corporation shall submit to the Governor and the Legislature, on or before January 1 of each year, a report on the status of the correctional work programs, including but not limited to the programs and funds which have been transferred to the corporation, the programs and funds to be taken over within the next year and the proposed use of the profits from such programs, a breakdown of the amount of non-inmate labor used, work subcontracted to other vendors, use of consultants, finished goods purchased for resale, and the number of inmates working in the correctional work programs at the time of the report. In addition, the corporation shall submit to the department, the Governor and the Legislature an annual independently audited financial statement and such other information as may be requested by the Legislature together with recommendations from the corporation relating to provisions for reasonable tax incentives to private enterprises that employ inmates, parolees or former inmates who have participated in correctional work programs. The department shall include, as a portion of its annual report, a report on post-release job placement and the rate of subsequent contact with the correctional system for those inmates who have participated in the correctional work programs operated by the corporation and by the department. Beginning January 1, 1991, the State Auditor shall conduct an annual financial audit of the corporation in conjunction with an independent audit conducted by the corporation's auditors. The State Auditor and the legislative PEER committee shall also conduct a biennial performance audit of the corporation for the period beginning January 1, 1991, through January 1, 1993, and thereafter upon the joint request of the Senate Corrections Committee, House Penitentiary Committee, Senate Finance Committee, and House Ways and Means Committee.

SOURCES: Laws, 1990, ch. 534, § 15; reenacted without change, Laws, 1996, ch. 547, § 24, eff from and after passage (approved April 13, 1996).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 47-5-561. Authority of corporation to request appropriations from general fund; repayment of funds; funds to be maintained in interest-bearing accounts.

(1) In addition to its other powers, the corporation shall have the power to request, through the department, an appropriation of general revenue funds for the purposes of operation of, addition to or renovation of facilities or correctional work programs at the various correctional institutions; however, upon receipt of such appropriation, the rental paid by the corporation for the operation of or such new remodeled or renovated facilities or the operation of a correctional work program shall be sufficient to amortize its cost over a period of five (5) years.

(2) The corporation shall maintain those prison industries funds in excess of that amount necessary for sustaining quarterly or monthly operations of the corporation in an interest-bearing account best serving the proper management of corporation funds and earning the maximum amount of interest allowed by law. The corporation shall cause monies from the interest-bearing account to be deposited quarterly or monthly into the corporation's checking account in order to pay the legal debts of the corporation, approved for payment by the corporation.

SOURCES: Laws, 1990, ch. 534, § 16; reenacted without change, Laws, 1996, ch. 547, § 25, eff from and after passage (approved April 13, 1996).

§ 47-5-563. Department may adopt rules governing use of inmates by corporation; corporation to establish policies relating to use of inmates; filing of rules and policies.

(1) The department may adopt such rules as may be necessary to govern the use of inmates by the corporation; however, such rules shall be related only to the need for security, inmate protections, and efficient operation of each institution.

(2) The corporation, with the input of the department, shall establish policies and procedures subject to the approval of the department's legal counsel relating to the use of inmates in the correctional work programs.

(3) All such policies and procedures adopted by the department and the corporation shall be placed on file in the office of the Secretary of State.

SOURCES: Laws, 1990, ch. 534, § 17; reenacted without change, Laws, 1996, ch. 547, § 26, eff from and after passage (approved April 13, 1996).

§ 47-5-565. Corporation to authorize expenditures from Prison Industries Fund.

To carry out the provisions of Sections 47-5-531 through 47-5-575, the provisions of Sections 47-5-301 et seq., and 47-5-501 et seq., Mississippi Code of 1972, the corporation shall authorize the transfer and expending of monies from the Prison Industries Fund.

SOURCES: Laws, 1990, ch. 534, § 18; reenacted without change, Laws, 1996, ch. 547, § 27, eff from and after passage (approved April 13, 1996).

Cross References — Prison Industries Fund, see § 47-5-66.

§ 47-5-567. Inmates ineligible for unemployment compensation or worker's compensation.

Except as otherwise specifically provided by law, no inmate shall be eligible for unemployment compensation or workmen's compensation whether employed by the corporation or by any other private enterprise operating on the grounds of a correctional institution or elsewhere where such employment shall be a part of a correctional work program or work release program of either the corporation or the department.

SOURCES: Laws, 1990, ch. 534, § 19; reenacted and amended, Laws, 1996, ch. 547, § 28, eff from and after passage (approved April 13, 1996).

Editor's Note — Section 71-3-1 provides that the words "workmen's compensation" shall mean "workers' compensation" wherever they appear in the code.

§ 47-5-569. Department to lease all or none of work programs at any one correctional institution; disposition of rent paid by corporation; approval of leases.

(1) Except as otherwise specifically provided by law, if the department leases a single correctional work program at any correctional institution to the corporation, the corporation shall lease all such correctional work programs at that institution. Any rent paid by the corporation to the department shall be deposited in a correctional programs trust fund for enhancement of education and training, post-release job placement, and other correctional purposes related to the purposes of Sections 47-5-531 through 47-5-575.

(2) All leases of department-owned land for the funding or operations of the corporation shall be subject to the approval of the corporation, the Mississippi Department of Corrections and the Public Procurement Review Board.

(3) This section shall not apply to any program within the prison agricultural enterprises operated by the department.

SOURCES: Laws, 1990, ch. 534, § 20; Laws, 1992, ch. 506, § 10; reenacted and amended, Laws, 1996, ch. 547, § 29, eff from and after passage (approved April 13, 1996).

Cross References — Public Procurement Review Board, see § 27-104-7.
Department of Corrections, see § 47-5-8.

§ 47-5-571. Unauthorized sales of prison-made goods or services prohibited.

Except as otherwise specifically provided by law, no goods, wares, services or merchandise manufactured, mined or offered in whole or in part by prisoners shall be sold or offered by any person or other authority except by the corporation, as authorized by Sections 47-5-531 through 47-5-575.

SOURCES: Laws, 1990, ch. 534, § 21; reenacted and amended, Laws, 1996, ch. 547, § 30, eff from and after passage (approved April 13, 1996).

§ 47-5-572. Repealed.

Repealed by its own terms, effective July 1, 2011.

§ 47-5-572. [Laws, 2004, ch. 502, § 1; Laws, 2007, ch. 352, § 1, eff from and after passage (approved Mar. 15, 2007.)]

Editor's Note — Former § 47-5-572 prohibited private correctional facilities from importing goods made by inmates in another state.

§ 47-5-573. Master plan for correctional work programs; needs of corporation considered in assigning and transferring prisoners.

(1) In adopting or modifying master plans for correctional work programs, and in the administration of the Department of Corrections, it shall be the objective of the department to develop a logical sequence of vocational training, employment by correctional work programs, and post-release job placement for inmates participating in correctional work programs.

(2) The Department of Corrections shall establish guidelines for the development of correctional work programs.

(3) The needs of the corporation shall be considered by the department when assigning and transferring prisoners to correctional institutions. The following criteria shall be used when assigning and transferring inmates:

(a) Skills of the inmate relevant to the corporation's industries;

(b) Security classification of the inmate relevant to the type of corporation's industry;

(c) Duration of availability of the inmate for employment by the corporation;

(d) Establishment of a concept of potentially rehabilitative inmate.

SOURCES: Laws, 1990, ch. 534, § 22; reenacted without change, Laws, 1996, ch. 547, § 31, eff from and after passage (approved April 13, 1996).

Cross References — Department of Corrections, see § 47-5-8.

§ 47-5-575. Records of corporation subject to public records act.

Any records or reports which relate to the financial aspect or operations of the corporation, with the exception of any trade secrets, shall be considered as public records and shall be subject to the provisions of the Mississippi Public Records Act of 1983.

SOURCES: Laws, 1990, ch. 534, § 23; reenacted without change, Laws, 1996, ch. 547, § 32, eff from and after passage (approved April 13, 1996).

Cross References — Public Records Act of 1983, see § 25-61-1 et seq.

§ 47-5-577. Repealed.

Repealed by Laws of 1996, ch. 547, § 33, eff from and after passage (approved April 13, 1996).

[Laws, 1990, ch. 534, § 29; Laws, 1994, ch. 511, § 1; Laws, 1995, ch. 403, § 1]

Editor's Note — Former § 47-5-577 was entitled: Repeal of Sections 47-5-531 through 47-5-575.

DRUG IDENTIFICATION PROGRAM

Sec.
47-5-601. Establishment of program by Department of Corrections.
47-5-603. Participation in program; submission to chemical analysis test.
47-5-605. Fees and costs for administering chemical analysis test.

§ 47-5-601. Establishment of program by Department of Corrections.

The Mississippi Department of Corrections is authorized to establish a drug identification program and shall have the power and duty to adopt rules not inconsistent with law as it may deem proper and necessary with respect to the establishment, administration and operation of the program.

SOURCES: Laws, 1983, ch. 435, § 1, eff from and after passage (approved March 30, 1983).

Cross References — Applicability of this section to a child placed on probation, see § 43-21-159.

Parole eligibility conditioned on submitting to chemical analysis test to detect presence of alcohol or controlled substance, see § 47-7-17.

Power of department of corrections to make rules requiring a parolee to submit to a chemical analysis test to detect presence of alcohol or controlled substance, see § 47-7-17.

Probation on earned probation eligibility conditioned on probationer submitting to chemical analysis test to detect presence of alcohol or controlled substance, see §§ 47-7-35, 47-7-47.

RESEARCH REFERENCES

ALR. Admissibility under state law of hospital record relating to intoxication or sobriety of patient. 80 A.L.R.3d 456.

Driving while intoxicated: duty of law enforcement officer to offer suspect chemical sobriety test under implied consent law. 95 A.L.R.3d 710.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test. 97 A.L.R.3d 852.

Propriety of requirement, as condition of probation, that defendant refrain from use of intoxicants. 19 A.L.R.4th 1251.

Propriety, as condition of probation granted pursuant to 18 USCS § 3651, of requiring that probationer refrain from consumption of alcoholic beverages. 37 A.L.R. Fed. 843.

Propriety of imposing special parole term as part of sentence, under 21 USCS § 846, for a conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 48 A.L.R. Fed. 767.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 66, 67 et seq.

CJS. 67A C.J.S., Pardon and Parole §§ 38-43, 59, 60, 62.

§ 47-5-603. Participation in program; submission to chemical analysis test.

Any offender on probation or released from a facility of the Department of Corrections on parole or earned probation who remains under the supervision of the Department of Corrections or any offender who is incarcerated in a state correctional facility may be required to participate in the Mississippi Department of Corrections drug identification program. Participation by an offender would consist of submission by the offender, from time to time and upon the request of a parole or probation supervisor, or authorized personnel of the department to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States.

SOURCES: Laws, 1983, ch. 435, § 2; Laws, 1991, ch. 437 § 1; Laws, 1998, ch. 314, § 1, eff from and after July 1, 1998.

RESEARCH REFERENCES

ALR. Admissibility under state law of hospital record relating to intoxication or sobriety of patient. 80 A.L.R.3d 456.

Driving while intoxicated: duty of law enforcement officer to offer suspect chemical sobriety test under implied consent law. 95 A.L.R.3d 710.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test. 97 A.L.R.3d 852.

Propriety of requirement, as condition of probation, that defendant refrain from use of intoxicants. 19 A.L.R.4th 1251.

Right of indigent defendant in state criminal case to assistance of chemist, toxicologist, technician, narcotics expert, or similar nonmedical specialist in substance analysis. 74 A.L.R.4th 388.

Propriety, as condition of probation granted pursuant to 18 USCS § 3651, of requiring that probationer refrain from consumption of alcoholic beverages. 37 A.L.R. Fed. 843.

Propriety of imposing special parole term as part of sentence, under 21 USCS § 846, for a conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 48 A.L.R. Fed. 767.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 64 et seq.

CJS. 67A C.J.S., Pardon and Parole §§ 38-43, 59, 60, 62.

§ 47-5-605. Fees and costs for administering chemical analysis test.

Each time the results of such a chemical analysis test indicate the unauthorized presence of alcohol or a controlled substance in the parolee or probationer, he or she shall be required to pay a fee of Ten Dollars ($10.00) to the Mississippi Department of Corrections drug identification program, which fee shall be used to pay for the cost of administering that particular test. All other costs of the program, including the costs of administering such tests in cases in which the presence of alcohol or a controlled substance is not found, will be paid by expenditures from the community service revolving fund as described in Section 47-7-49.

SOURCES: Laws, 1983, ch. 435, § 3, eff from and after passage (approved March 30, 1983).

RESEARCH REFERENCES

ALR. Admissibility under state law of hospital record relating to intoxication or sobriety of patient. 80 A.L.R.3d 456.

Driving while intoxicated: duty of law enforcement officer to offer suspect chemical sobriety test under implied consent law. 95 A.L.R.3d 710.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test. 97 A.L.R.3d 852.

Propriety of requirement, as condition of probation, that defendant refrain from use of intoxicants. 19 A.L.R.4th 1251.

Right of indigent defendant in state criminal case to assistance of chemist, toxicologist, technician, narcotics expert, or similar nonmedical specialist in substance analysis. 74 A.L.R.4th 388.

Propriety, as condition of probation granted pursuant to 18 USCS § 3651, of requiring that probationer refrain from consumption of alcoholic beverages. 37 A.L.R. Fed. 843.

Propriety of imposing special parole term as part of sentence, under 21 USCS § 846, for a conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 48 A.L.R. Fed. 767.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 66, 67 et seq.

CJS. 67A C.J.S., Pardon and Parole §§ 38-43, 59, 60, 62.

PRISON OVERCROWDING EMERGENCY POWERS ACT

Sec.
47-5-701. Short title [Repealed effective July 1, 2018].
47-5-703. Definitions [Repealed effective July 1, 2018].
47-5-705. Requirements for declaration of state of emergency [Repealed effective July 1, 2018].

47-5-707. Notice of overcrowded prison conditions; thirty-day report of overcrowded prison conditions [Repealed effective July 1, 2018].
47-5-709. Thirty-day report by State Parole Board [Repealed effective July 1, 2018].
47-5-711. Powers of Governor upon receipt of reports [Repealed effective July 1, 2018].
47-5-713. Advancement of parole eligibility dates during state of emergency [Repealed effective July 1, 2018].
47-5-715. Weekly certification of population figures during state of emergency; termination of state of emergency [Repealed effective July 1, 2018].
47-5-717. Sixty-day report of overcrowded prison conditions [Repealed effective July 1, 2018].
47-5-719. Powers of Governor upon receipt of report [Repealed effective July 1, 2018].
47-5-721. Termination of state of emergency by order of Governor [Repealed effective July 1, 2018].
47-5-723. Revocation of conditional advancement of parole eligibility date [Repealed effective July 1, 2018].
47-5-725. Conditions of advancement of parole eligibility date [Repealed effective July 1, 2018].
47-5-727. Advancement of parole eligibility date to be independent of other adjustments [Repealed effective July 1, 2018].
47-5-729. Establishment and quarterly certification or alteration of operating capacities [Repealed effective July 1, 2018].
47-5-731. Repeal of Sections 47-5-701 through 47-5-729.

§ 47-5-701. Short title [Repealed effective July 1, 2018].

Sections 47-5-701 through 47-5-729 shall be known and may be cited as the "Prison Overcrowding Emergency Powers Act."

SOURCES: Laws, 1985, ch. 499, § 1; reenacted, Laws, 1986, ch. 413, § 127; reenacted, Laws, 1987, ch. 335, § 1; reenacted, Laws, 1988, ch. 504, § 44; reenacted, Laws, 1990, ch. 315, § 1; reenacted, Laws, 1993, ch. 419, § 1; reenacted without change, Laws, 1999, ch. 537, § 1; reenacted without change, Laws, 2001, ch. 411, § 1; reenacted without change, Laws, 2002, ch. 615, § 1; reenacted without change, Laws, 2005, ch. 519, § 1; reenacted without change, Laws, 2006, ch. 395, § 1; reenacted without change, Laws, 2008, ch. 322, § 1; reenacted without change, Laws, 2012, ch. 322, § 1; reenacted without change, Laws, 2014, ch. 316, § 1, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

This section was reenacted without change by Laws of 2014, ch. 316, § 1, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

RESEARCH REFERENCES

ALR. Conditions relating to placement of more than one prisoner per cell as violation of inmates' federal constitutional rights. 85 A.L.R. Fed. 308.

Propriety and construction of "totality of conditions" analysis in federal court's consideration of Eighth Amendment challenge to prison conditions. 85 A.L.R. Fed. 750.

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 44.5.

§ 47-5-703. Definitions [Repealed effective July 1, 2018].

For the purposes of Sections 47-5-701 through 47-5-729 the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Inmate" means every person who at the time of the declaration of a prison system overcrowding state of emergency, or at any time during the continuation of a state of emergency, is incarcerated by the Mississippi Department of Corrections as a result of a commitment to the department, including persons committed to the department and incarcerated in local or county jails or other facilities authorized to house state inmates.

(b) "Operating capacity" means the total number of state inmates which can be safely and reasonably housed in facilities operated by the Department of Corrections and in local or county jails or other facilities authorized to house state inmates as certified by the department, subject to applicable federal and state laws and rules and regulations.

(c) "Parole eligibility date" means the date on which an inmate becomes eligible for release by parole under the provisions of Section 47-7-3, Mississippi Code of 1972. For the purposes of Sections 47-5-701 through 47-5-729, an inmate with a sentence of one (1) year shall be deemed to have a parole eligibility date which shall be the last day of his sentence.

(d) "Prison" means any correctional facility operated by the Mississippi Department of Corrections.

(e) "Prison system" means the prisons operated by the Mississippi Department of Corrections and those local or county jails or other facilities authorized to house state inmates.

(f) "Prison system population" means the total number of state inmates housed in the prisons operated by the Mississippi Department of Corrections and in those local or county jails or other facilities authorized to house state inmates.

(g) "Qualified inmate" means inmates who are not incarcerated for convictions of murder, kidnapping, arson, armed robbery, rape, sexual offenses or any offense involving the use of a deadly weapon and who are within that number of days of their parole eligibility date at the time of the declaration of the state of emergency as is specified to be conditionally advanced under the declaration of the state of emergency. An inmate sentenced as an habitual offender shall not be considered a "qualified inmate."

(h) "State of emergency" means a prison system overcrowding state of emergency as provided in Section 47-5-711.

SOURCES: Laws, 1985, ch. 499, § 2; reenacted, Laws, 1986, ch. 413, § 128; reenacted, Laws, 1987, ch. 335, § 2; reenacted and amended, Laws, 1988, ch. 504, § 45; reenacted, Laws, 1990, ch. 315, § 2; reenacted, Laws, 1993, ch. 419, § 2; reenacted without change, Laws, 1999, ch. 537, § 2; reenacted without change, Laws, 2001, ch. 411, § 2; reenacted without change, Laws, 2002, ch. 615, § 2; reenacted without change, Laws, 2005, ch. 519, § 2; reenacted without change, Laws, 2006, ch. 395, § 2; reenacted without change, Laws, 2008, ch. 322, § 2; reenacted without change, Laws, 2012, ch. 322, § 2; reenacted without change, Laws, 2014, ch. 316, § 2, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

This section was reenacted without change by Laws of 2014, ch. 316, § 2, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-705. Requirements for declaration of state of emergency [Repealed effective July 1, 2018].

The requirements for the declaration of a prison system overcrowding state of emergency are as follows:

(a) Prison system population in excess of ninety-five percent (95%) of the prison system operating capacity for at least thirty (30) consecutive days immediately preceding the declaration of a state of emergency;

(b) Full appropriate utilization by the Mississippi Department of Corrections of powers which tend either to reduce prison system population or expand operating capacity. Such powers include, but are not limited to, earned time allowances as specified in Sections 47-5-138 and 47-5-139, Mississippi Code of 1972, review of offenders for purposes of reclassification, reevaluation of persons eligible for consideration for work release, supervised earned release or other release programs authorized by law and arrangements for housing inmates of the Department of Corrections in local or county jails or other facilities authorized to house state inmates; and

(c) Full appropriate utilization by the State Parole Board of those powers which tend to reduce the prison system population. Such powers include, but are not limited to, parole as provided in Section 47-7-3, Mississippi Code of 1972, the review of inmates who have had their parole revoked and the reevaluation of inmates previously denied parole.

SOURCES: Laws, 1985, ch. 499, § 3; reenacted, Laws, 1986, ch. 413, § 129; reenacted, Laws, 1987, ch. 335, § 3; reenacted, Laws, 1988, ch. 504, § 46; reenacted, Laws, 1990, ch. 315, § 3; reenacted, Laws, 1993, ch. 419, § 3;

reenacted without change, Laws, 1999, ch. 537, § 3; reenacted without change, Laws, 2001, ch. 411, § 3; reenacted without change, Laws, 2002, ch. 615, § 3; reenacted without change, Laws, 2005, ch. 519, § 3; reenacted without change, Laws, 2006, ch. 395, § 3; reenacted and amended, Laws, 2008, ch. 322, § 3; reenacted without change, Laws, 2012, ch. 322, § 3; reenacted without change, Laws, 2014, ch. 316, § 3, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

This section was reenacted without change by Laws of 2014, ch. 316, § 3, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — 30-day report by State Parole Board, including evaluation of utilization of powers which tend to reduce the prison system population, see § 47-5-709.

Determination by Governor as to existence of conditions for declaration of state of emergency, see § 47-5-711.

Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

RESEARCH REFERENCES

Am Jur. 24 Am. Jur. Proof of Facts 3d 467, Proof of Unconstitutional Prison Conditions.

§ 47-5-707. Notice of overcrowded prison conditions; thirty-day report of overcrowded prison conditions [Repealed effective July 1, 2018].

Whenever the prison system population exceeds ninety-five percent (95%) of operating capacity, the Commissioner of Corrections shall immediately notify the Governor and the State Parole Board of this fact. The notice shall include the current prison system population and the prison system operating capacity. A report must be made within ten (10) days after the thirtieth day of operating in excess of ninety-five percent (95%) of operating capacity. The report shall include the prison system operating capacity, the prison system population during the relevant time period, and may include a recommended specific term of advancement of the parole eligibility dates.

SOURCES: Laws, 1985, ch. 499, § 4; reenacted, Laws, 1986, ch. 413, § 130; reenacted, Laws, 1987, ch. 335, § 4; reenacted and amended, Laws, 1988, ch. 504, § 47; reenacted, Laws, 1990, ch. 315, § 4; reenacted, Laws, 1993, ch. 419, § 4; reenacted without change, Laws, 1999, ch. 537, § 4; reenacted without change, Laws, 2001, ch. 411, § 4; reenacted without change, Laws, 2002, ch. 615, § 4; reenacted without change, Laws, 2005, ch. 519, § 4; reenacted without change, Laws, 2006, ch. 395, § 4; reenacted without change, Laws, 2008, ch. 322, § 4; reenacted without change, Laws, 2012, ch. 322, § 4; reenacted without change, Laws, 2014, ch. 316, § 4, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

This section was reenacted without change by Laws of 2014, ch. 316, § 4, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Termination of action if the Governor has not exercised his powers within 14 days after receipt of the reports specified in this section and § 47-5-709, see § 47-5-711.

60-day report of overcrowded prison conditions, see § 47-5-717.

Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-709. Thirty-day report by State Parole Board [Repealed effective July 1, 2018].

If the prison system population exceeds ninety-five percent (95%) of operating capacity for thirty (30) consecutive days, the State Parole Board shall meet to determine whether there has been full appropriate exercise of the powers of the State Parole Board which tend to reduce the prison system population. The State Parole Board shall report its findings to the Governor within ten (10) days after the thirtieth day of operating in excess of ninety-five percent (95%) of prison operating capacity. The report shall include the determination of the State Parole Board regarding its utilization of powers described in paragraph (c) of Section 47-5-705.

SOURCES: Laws, 1985, ch. 499, § 5; reenacted, Laws, 1986, ch. 413, § 131; reenacted, Laws, 1987, ch. 335, § 5; reenacted, Laws, 1988, ch. 504, § 48; reenacted, Laws, 1990, ch. 315, § 5; reenacted, Laws, 1993, ch. 419, § 5; reenacted without change, Laws, 1999, ch. 537, § 5; reenacted without change, Laws, 2001, ch. 411, § 5; reenacted without change, Laws, 2002, ch. 615, § 5; reenacted without change, Laws, 2005, ch. 519, § 5; reenacted without change, Laws, 2006, ch. 395, § 5; reenacted without change, Laws, 2008, ch. 322, § 5; reenacted without change, Laws, 2012, ch. 322, § 5; reenacted without change, Laws, 2014, ch. 316, § 5, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

This section was reenacted without change by Laws of 2014, ch. 316, § 5, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Termination of action if the Governor has not exercised his powers within 14 days after receipt of the reports specified in this section and § 47-5-707, see § 47-5-711.

Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-711. Powers of Governor upon receipt of reports [Repealed effective July 1, 2018].

Upon receipt of the report from the Commissioner of Corrections and the report of the State Parole Board, the Governor has the power to:

(a) Determine to be in error the determination that there had been full appropriate exercise of powers which tends to reduce prison population, in which case no state of emergency shall commence;

(b) Determine that commencement of a state of emergency would be injurious to the public good, or raises the potential of threatening the safety of the public in the state as a whole or in a particular community, in which case no state of emergency shall commence; or

(c) Determine that the reports establish the existence of the conditions for a declaration of a prison system overcrowding state of emergency as described in Section 47-5-705 and declare a state of emergency, specifying an amount of advancement of parole eligibility dates from thirty (30) to ninety (90) days.

If fourteen (14) days after the receipt of the reports to the Governor pursuant to Sections 47-5-707 and 47-5-709 the Governor has not exercised any of the powers specified in paragraphs (a), (b) and (c) of this section, action under Sections 47-5-701 through 47-5-729 is considered terminated.

If the Governor exercises a power under paragraph (a) or (b) of this section, he shall state the reasons for the exercise of such power in the notification of his action to the Commissioner of Corrections and the State Parole Board.

SOURCES: Laws, 1985, ch. 499, § 6; reenacted, Laws, 1986, ch. 413, § 132; reenacted, Laws, 1987, ch. 335, § 6; reenacted and amended, Laws, 1988, ch. 504, § 49; reenacted, Laws, 1990, ch. 315, § 6; reenacted, Laws, 1993, ch. 419, § 6; reenacted without change, Laws, 1999, ch. 537, § 6; reenacted without change, Laws, 2001, ch. 411, § 6; reenacted without change, Laws, 2002, ch. 615, § 6; reenacted without change, Laws, 2005, ch. 519, § 6; reenacted without change, Laws, 2006, ch. 395, § 6; reenacted and amended, Laws, 2008, ch. 322, § 6; reenacted without change, Laws, 2012, ch. 322, § 6; reenacted without change, Laws, 2014, ch. 316, § 6, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

This section was reenacted without change by Laws of 2014, ch. 316, § 6, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-713. Advancement of parole eligibility dates during state of emergency [Repealed effective July 1, 2018].

Upon the declaration of a state of emergency, the parole eligibility dates of qualified inmates shall be conditionally advanced. The amount of advancement of parole eligibility dates must be specified in the declaration by the Governor. When the state of emergency has been terminated, the parole eligibility dates which were conditionally advanced shall be reset to the parole eligibility date set prior to the emergency for those inmates who were not released on parole under the provisions of Sections 47-5-701 through 47-5-729.

SOURCES: Laws, 1985, ch. 499, § 7; reenacted, Laws, 1986, ch. 413, § 133; reenacted, Laws, 1987, ch. 335, § 7; reenacted, Laws, 1988, ch. 504, § 50; reenacted, Laws, 1990, ch. 315, § 7; reenacted, Laws, 1993, ch. 419, § 7; reenacted without change, Laws, 1999, ch. 537, § 7; reenacted without change, Laws, 2001, ch. 411, § 7; reenacted without change, Laws, 2002, ch. 615, § 7; reenacted without change, Laws, 2005, ch. 519, § 7; reenacted without change, Laws, 2006, ch. 395, § 7; reenacted without change, Laws, 2008, ch. 322, § 7; reenacted without change, Laws, 2012, ch. 322, § 7; reenacted without change, Laws, 2014, ch. 316, § 7, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

This section was reenacted without change by Laws of 2014, ch. 316, § 7, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-715. Weekly certification of population figures during state of emergency; termination of state of emergency [Repealed effective July 1, 2018].

During the continuation of a state of emergency, the Commissioner of the Department of Corrections shall weekly certify to the Governor the prison system population for each day of the preceding week. The Governor shall declare the state of emergency terminated upon notification that the prison system population has been at or below ninety-five percent (95%) of operating capacity for seven (7) consecutive days.

If no declaration of termination is issued within seven (7) days after the certification of conditions for termination of the state of emergency, the state of emergency is considered terminated as of the seventh day after the certification.

SOURCES: Laws, 1985, ch. 499, § 8; reenacted, Laws, 1986, ch. 413, § 134; reenacted, Laws, 1987, ch. 335, § 8; reenacted, Laws, 1988, ch. 504, § 51; reenacted, Laws, 1990, ch. 315, § 8; reenacted, Laws, 1993, ch. 419, § 8;

reenacted without change, Laws, 1999, ch. 537, § 8; reenacted without change, Laws, 2001, ch. 411, § 8; reenacted without change, Laws, 2002, ch. 615, § 8; reenacted without change, Laws, 2005, ch. 519, § 8; reenacted without change, Laws, 2006, ch. 395, § 8; reenacted without change, Laws, 2008, ch. 322, § 8; reenacted without change, Laws, 2012, ch. 322, § 8; reenacted without change, Laws, 2014, ch. 316, § 8, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

This section was reenacted without change by Laws of 2014, ch. 316, § 8, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-717. Sixty-day report of overcrowded prison conditions [Repealed effective July 1, 2018].

If sixty (60) days after the declaration of a prison system overcrowding state of emergency or of an additional advancement of the parole eligibility dates the prison system population continues to be in excess of ninety-five percent (95%) of operating capacity, the Commissioner of Corrections shall report to the Governor indicating whether an additional advancement of the parole eligibility dates is necessary in order to reduce the prison system population to ninety-five percent (95%) of operating capacity and indicating the amount of any recommended additional advancement of the parole eligibility dates. The recommended amount must be no less than thirty (30) days nor more than ninety (90) days. The report shall include those factors which would tend to indicate that the prison system population is likely to increase above operating capacity within ninety (90) days. The report shall discuss the availability of field supervisors, the currently existing supervision case loads, and the measures that could be taken and the resources that would be needed to provide appropriate supervision of persons released early as a result of an additional advancement of the parole eligibility dates.

SOURCES: Laws, 1985, ch. 499, § 9; reenacted, Laws, 1986, ch. 413, § 135; reenacted, Laws, 1987, ch. 335, § 9; reenacted and amended, Laws, 1988, ch. 504, § 52; reenacted, Laws, 1990, ch. 315, § 9; reenacted, Laws, 1993, ch. 419, § 9; reenacted without change, Laws, 1999, ch. 537, § 9; reenacted without change, Laws, 2001, ch. 411, § 9; reenacted without change, Laws, 2002, ch. 615, § 9; reenacted without change, Laws, 2005, ch. 519, § 9; reenacted without change, Laws, 2006, ch. 395, § 9; reenacted without change, Laws, 2008, ch. 322, § 9; reenacted without change, Laws, 2012, ch. 322, § 9; reenacted without change, Laws, 2014, ch. 316, § 9, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — 30-day report of overcrowded prison conditions, see § 47-5-707.

Options of the Governor upon receipt of the report specified in this section, see § 47-5-719.

Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-719. Powers of Governor upon receipt of report [Repealed effective July 1, 2018].

Upon receipt of the report from the Commissioner of Corrections as provided in Section 47-5-717, the Governor has the power to:

(a) Determine to be in error any conclusion of the Commissioner of Corrections that an additional advancement of the parole eligibility dates is necessary in order for the prison system population to be reduced to ninety-five percent (95%) of operating capacity, in which case no additional advancements of the parole eligibility dates shall occur;

(b) Determine that the ordering of additional advancements of the parole eligibility dates would be injurious to the public good or raises the potential of threatening the safety of the public in the state as a whole or in a particular community, in which case no additional advancement of parole eligibility dates shall occur; or

(c) Determine that an additional advancement of the parole eligibility dates is necessary in order for the prison system population to be reduced to ninety-five percent (95%) of operating capacity and order additional advancements specifying the amount of additional advancements, which shall be at least thirty (30) and not more than ninety (90) days.

If fourteen (14) days after the receipt of the report to the Governor pursuant to Section 47-5-717 including a determination of the Commissioner of Corrections that an additional advancement of the parole eligibility dates is not necessary in order for the prison system population to be reduced to ninety-five percent (95%) of operating capacity the Governor has not exercised the power provided in paragraph (c) of this section, action initiated under Section 47-5-717 is considered terminated.

If the Governor exercises a power provided under paragraph (a) or (b) of this section, he shall state the reasons for the exercise of such power in the notification of his action to the Commissioner of Corrections and the State Parole Board.

If the Governor orders additional advancements of the parole eligibility dates under this section, the amount of advancement of the parole eligibility dates must be as ordered by the Governor.

SOURCES: Laws, 1985, ch. 499, § 10; reenacted, Laws, 1986, ch. 413, § 136; reenacted, Laws, 1987, ch. 335, § 10; reenacted and amended, Laws, 1988, ch. 504, § 53; reenacted, Laws, 1990, ch. 315, § 10; reenacted, Laws, 1993, ch. 419, § 10; reenacted without change, Laws, 1999, ch. 537, § 10; reenacted without change, Laws, 2001, ch. 411, § 10; reenacted without change, Laws, 2002, ch. 615, § 10; reenacted without change, Laws, 2005, ch. 519, § 10; reenacted without change, Laws, 2006, ch. 395, § 10; reenacted and

amended, Laws, 2008, ch. 322, § 10; reenacted without change Laws, 2012, ch. 322, § 10; reenacted without change, Laws, 2014, ch. 316, § 10, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.
Amendment Notes — The 2014 amendment reenacted the section without change.
Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-721. Termination of state of emergency by order of Governor [Repealed effective July 1, 2018].

If at any time during a state of emergency the Governor determines that the continuation of the state of emergency is injurious to the public good or raises the potential of threatening the safety of the public in the state as a whole or in a particular community, he may order the state of emergency terminated.

SOURCES: Laws, 1985, ch. 499, § 11; reenacted, Laws, 1986, ch. 413, § 137; reenacted, Laws, 1987, ch. 335, § 11; reenacted, Laws, 1988, ch. 504, § 54; reenacted, Laws, 1990, ch. 315, § 11; reenacted, Laws, 1993, ch. 419, § 11; reenacted without change, Laws, 1999, ch. 537, § 11; reenacted without change, Laws, 2001, ch. 411, § 11; reenacted without change, Laws, 2002, ch. 615, § 11; reenacted without change, Laws, 2005, ch. 519, § 11; reenacted without change, Laws, 2006, ch. 395, § 11; reenacted without change, Laws, 2008, ch. 322, § 11; reenacted without change, Laws, 2012, ch. 322, § 11; reenacted without change, Laws, 2014, ch. 316, § 11, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.
Sections 47-5-701 through 47-5-731 were repealed by operation of law on July 1, 2004.
Amendment Notes — The 2014 amendment reenacted the section without change.
Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-723. Revocation of conditional advancement of parole eligibility date [Repealed effective July 1, 2018].

Revocation of the conditional advancement of the parole eligibility date is a permissible prison disciplinary action according to the same procedures governing the forfeiture of earned time allowances as a prison disciplinary action.

SOURCES: Laws, 1985, ch. 499, § 12; reenacted, Laws, 1986, ch. 413, § 138; reenacted, Laws, 1987, ch. 335, § 12; reenacted, Laws, 1988, ch. 504, § 55; reenacted, Laws, 1990, ch. 315, § 12; reenacted, Laws, 1993, ch. 419, § 12; reenacted without change, Laws, 1999, ch. 537, § 12; reenacted without change, Laws, 2001, ch. 411, § 12; reenacted without change, Laws, 2002, ch. 615, § 12; reenacted without change, Laws, 2005, ch. 519, § 12; reen-

acted without change, Laws, 2006, ch. 395, § 12; reenacted without change, Laws, 2008, ch. 322, § 12; reenacted without change, Laws, 2012, ch. 322, § 12; reenacted without change, Laws, 2014, ch. 316, § 12, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-725. Conditions of advancement of parole eligibility date [Repealed effective July 1, 2018].

The State Parole Board shall prescribe conditions of advancement of the parole eligibility date applicable prior to an inmate's release. The State Parole Board shall prescribe conditions of supervision consistent with existing regulations applicable after release on parole. When an inmate is released under the provisions of Sections 47-5-701 through 47-5-729 he shall be considered to be in the legal custody of the Department of Corrections.

SOURCES: Laws, 1985, ch. 499, § 13; reenacted, Laws, 1986, ch. 413, § 139; reenacted, Laws, 1987, ch. 335, § 13; reenacted, Laws, 1988, ch. 504, § 56; reenacted, Laws, 1990, ch. 315, § 13; reenacted, Laws, 1993, ch. 419, § 13; reenacted without change, Laws, 1999, ch. 537, § 13; reenacted without change, Laws, 2001, ch. 411, § 13; reenacted without change, Laws, 2002, ch. 615, § 13; reenacted without change, Laws, 2005, ch. 519, § 13; reenacted without change, Laws, 2006, ch. 395, § 13; reenacted without change, Laws, 2008, ch. 322, § 13; reenacted without change, Laws, 2012, ch. 322, § 13; reenacted without change, Laws, 2014, ch. 316, § 13, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

RESEARCH REFERENCES

ALR. The propriety of conditioning parole on defendant's not entering specified geographical area. 54 A.L.R.5th 743.

§ 47-5-727. Advancement of parole eligibility date to be independent of other adjustments [Repealed effective July 1, 2018].

Advancement of parole eligibility dates under Sections 47-5-701 through 47-5-729 shall occur independently of all other adjustments of the parole eligibility dates, such as advancing the parole eligibility dates as a result of receiving earned time allowances.

SOURCES: Laws, 1985, ch. 499, § 14; reenacted, Laws, 1986, ch. 413, § 140; reenacted, Laws, 1987, ch. 335, § 14; reenacted, Laws, 1988, ch. 504, § 57; reenacted, Laws, 1990, ch. 315, § 14; reenacted, Laws, 1993, ch. 419, § 14; reenacted without change, Laws, 1999, ch. 537, § 14; reenacted without change, Laws, 2001, ch. 411, § 14; reenacted without change, Laws, 2002, ch. 615, § 14; reenacted without change, Laws, 2005, ch. 519, § 14; reenacted without change, Laws, 2006, ch. 395, § 14; reenacted and amended, Laws, 2008, ch. 322, § 14; reenacted without change Laws, 2012, ch. 322, § 14; reenacted without change, Laws, 2014, ch. 316, § 14, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-729. Establishment and quarterly certification or alteration of operating capacities [Repealed effective July 1, 2018].

The Commissioner of Corrections shall within thirty (30) days after April 10, 1985, establish the operating capacities of the prison system, and shall at least quarterly certify existing operating capacities or establish changed or new operating capacities.

SOURCES: Laws, 1985, ch. 499, § 15; reenacted, Laws, 1986, ch. 413, § 141; reenacted, Laws, 1987, ch. 335, § 15; reenacted and amended, Laws, 1988, ch. 504, § 58; reenacted, Laws, 1990, ch. 315, § 15; reenacted, Laws, 1993, ch. 419, § 15; reenacted without change, Laws, 1999, ch. 537, § 15; reenacted without change, Laws, 2001, ch. 411, § 15; reenacted without change, Laws, 2002, ch. 615, § 15; reenacted without change, Laws, 2005, ch. 519, § 15; reenacted without change, Laws, 2006, ch. 395, § 15; reenacted without change, Laws, 2008, ch. 322, § 15; reenacted without change Laws, 2012, ch. 322, § 15; reenacted without change, Laws, 2014, ch. 316, § 15, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-731.

This section was reenacted without change by Laws of 2014, ch. 316, § 15, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

Cross References — Applicability of general conditions of parole to advancement of parole eligibility dates under Prison Overcrowding Emergency Powers Act, see § 47-7-3.

§ 47-5-731. Repeal of Sections 47-5-701 through 47-5-729.

Sections 47-5-701 through 47-5-729, Mississippi Code of 1972, which create the Prison Overcrowding Emergency Powers Act, shall stand repealed from and after July 1, 2018.

SOURCES: Laws, 1986, ch. 413, § 142; Laws, 1987, ch. 335, § 16; Laws, 1988, ch. 504, § 59; Laws, 1990, ch. 315, § 16; Laws, 1991, ch. 378 § 1; Laws, 1993, ch. 419, § 16; Laws, 1994, ch. 312, § 1; Laws, 1995, ch. 389, § 1; Laws, 1999, ch. 537, § 16; Laws, 2001, ch. 411, § 16; Laws, 2002, ch. 615 , § 16; reenacted and amended, Laws, 2005, ch. 519, § 16; Laws, 2006, ch. 395, § 16; Laws, 2008, ch. 322, § 16; reenacted and amended, Laws, 2012, ch. 322, § 16; reenacted and amended, Laws, 2014, ch. 316, § 16, eff from and after passage (approved Mar. 12, 2014.)

Amendment Notes — The 2014 amendment reenacted and amended the section by extending the repealer provision from "July 1, 2014" to "July 1, 2018."

ADMINISTRATIVE REVIEW PROCEDURE

SEC.	
47-5-801.	Authority to adopt administrative review procedure.
47-5-803.	Procedure constitutes administrative remedies available to offenders for purpose of preserving cause of action against state.
47-5-805.	Application of procedures to pending lawsuits.
47-5-807.	Judicial review of agency decision.

§ 47-5-801. Authority to adopt administrative review procedure.

The Department of Corrections is hereby authorized to adopt an administrative review procedure at each of its correctional facilities in compliance with 42 USCS Section 1997, the "Civil Rights of Institutionalized Persons Act," or CRIPA, and Part 40 of Title 28, Code of Federal Regulations.

SOURCES: Laws, 1989, ch. 563, § 1, eff from and after July 1, 1989.

Federal Aspects — Civil Rights of Institutionalized Persons Act, see 42 USCS §§ 1997 et seq.

JUDICIAL DECISIONS

1. Administrative review procedures.

Appellant's motion for post-conviction collateral relief was properly dismissed because it was barred as a successive motion Miss. Code Ann. § 99-39-23(6) (Supp. 2011), and he did not meet an exception. Rather, appellant raised issues of inmate classification that were within the administrative purview of the department of corrections under Miss. Code Ann. §§ 47-5-801 — 47-5-807 (Rev. 2004) and not an issue properly brought in a post-conviction collateral relief motion. Cosner v. State, 111 So. 3d 111 (Miss. Ct. App. 2013).

Inmate's appeal of a judgment denying his motion to mandate parole eligibility on his life sentence pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act was dismissed under Miss. Code Ann. § 47-5-803(2) because the inmate did not exhaust his administrative remedies; the Mississippi Department of Corrections (MDOC) had determined that the inmate was ineligible for parole consideration by the parole board, but the record was completely bare as to any proof that the inmate ever exhausted his administrative remedies or even voiced his grievance through the MDOC's administrative-review procedure. Keys v. State, 67 So. 3d 783 (Miss. Ct. App. 2010), reversed by 67 So. 3d 758, 2011 Miss. LEXIS 389 (Miss. 2011).

Because Miss. Code Ann. § 47-5-1003(3) provided that reclassifying an inmate from house arrest was within the Department of Corrections' exclusive jurisdiction, and because an inmate had not exhausted the inmate's administrative remedies in accordance with Miss. Code Ann. §§ 47-5-801, 47-5-803(2), the circuit court lacked jurisdiction to consider the inmate's postconviction motion. Hollingsworth v. State, 66 So. 3d 1254 (Miss. Ct. App. July 19, 2011).

Inmate who is uncertain about the operation of his sentence and desires clarity should pursue administrative review procedures before turning to court. Burns v. State, 933 So. 2d 329 (Miss. Ct. App. 2006).

§ 47-5-803. Procedure constitutes administrative remedies available to offenders for purpose of preserving cause of action against state.

(1) Upon approval of the administrative review procedure by a federal court as authorized and required by the Civil Rights of Institutionalized Persons Act, and the implementation of the procedure within the department, this procedure shall constitute the administrative remedies available to offenders for the purpose of preserving any cause of action such offenders may claim to have against the State of Mississippi, the Department of Corrections or its officials or employees.

(2) No state court shall entertain an offender's grievance or complaint which falls under the purview of the administrative review procedure unless and until such offender shall have exhausted the remedies as provided in such procedure. If at the time the petition is filed the administrative review process has not yet been completed, the court shall stay the proceedings for a period not to exceed ninety (90) days to allow for completion of the procedure and exhaustion of the remedies thereunder.

SOURCES: Laws, 1989, ch. 563, § 2, eff from and after July 1, 1989.

Federal Aspects — Civil Rights of Institutionalized Persons Act, see 42 USCS §§ 1997 et seq.

JUDICIAL DECISIONS

1. In general.
2. Stay of proceedings.
3. Failure to exhaust administrative remedies.

1. In general.

Inmate's disciplinary complaint should not have been dismissed for lack of jurisdiction because he made a timely filing after exhausting his administrative remedies, as required by Miss. Code Ann. § 47-5-803 and Miss. Code Ann. § 47-5-807; the circuit court did not perform its full review function when it determined the inmate's constitutional rights were not violated. Siggers v. Epps, 962 So. 2d 78 (Miss. Ct. App. 2007).

Inmate's argument that other prisoners were transferred from his custody status back to a less restrictive custody status, while he was not reclassified, was an issue which arose after reclassification, with no indication that it was properly presented for administrative relief; it was therefore not properly presented before the appellate court. Hurns v. Miss. Dep't of Corr., 878 So. 2d 223 (Miss. Ct. App. 2004), writ of certiorari denied by 878 So. 2d 67, 2004 Miss. LEXIS 918 (Miss. 2004).

A defendant who wishes to challenge the revocation of his probation need not pursue the administrative remedies set out in Miss. Code Ann. § 47-5-803, as only a court can continue or revoke a defendant's probation. Rodriguez v. State, 839 So. 2d 561 (Miss. Ct. App. 2003).

The statute prohibits the state courts from hearing inmate complaints unless and until the prisoner exhausts the administrative review procedure. If a prisoner prematurely petitions the circuit court, the statute requires the court to stay the complaint for 90 days to allow completion of the administrative review procedure. Clary v. Lee, 763 So. 2d 921 (Miss. Ct. App. 2000).

2. Stay of proceedings.

Inmate could not seek judicial relief on his claim that the Mississippi Department of Corrections (MDOC) improperly calculated his earned time credit on his sentence because he failed to exhaust his administrative remedies pursuant to Miss. Code Ann. § 47-5-803(2). The judicial proceedings were to be stayed for 90 days until the inmate filed a complaint with the Administrative Remedies Program of the MDOC and the Administrative Remedies Program adjudicated the complaint. Guy v. State, 915 So. 2d 508 (Miss. Ct. App. 2005).

Where an inmate had completed the administrative review procedure, there was no reason for the trial court to stay his complaint for 90 days. Clary v. Lee, 763 So. 2d 921 (Miss. Ct. App. 2000).

3. Failure to exhaust administrative remedies.

Inmate's appeal of a judgment denying his motion to mandate parole eligibility on his life sentence pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act was dismissed under Miss. Code Ann. § 47-5-803(2) because the inmate did not exhaust his administrative remedies; the Mississippi Department of Corrections (MDOC) had determined that the inmate was ineligible for parole consideration by the parole board, but the record was completely bare as to any proof that the inmate ever exhausted his administrative remedies or even voiced his grievance through the MDOC's administrative-review procedure. Keys v. State, 67 So. 3d 783 (Miss. Ct. App. 2010), reversed by 67 So. 3d 758, 2011 Miss. LEXIS 389 (Miss. 2011).

Because Miss. Code Ann. § 47-5-1003(3) provided that reclassifying an inmate from house arrest was within the Department of Corrections' exclusive jurisdiction, and because an inmate had not exhausted the inmate's administrative remedies in accordance with Miss. Code Ann. §§ 47-5-801, 47-5-803(2), the circuit court lacked jurisdiction to consider the inmate's postconviction motion. Hollingsworth v. State, 66 So. 3d 1254 (Miss. Ct. App. July 19, 2011).

Court of appeals was without jurisdiction to consider an inmate's claims that a trial court erred in dismissing his petitions to show cause and clarify his sentence because there was no indication in the record that the inmate exhausted his administrative remedies on those claims; pursuant to Miss. Code Ann. ' 47-5-803, the petitions had to be handled initially under administrative-review procedures, rather than in the courts. Walker v. State, 35 So. 3d 555 (Miss. Ct. App. 2010).

Because there was clearly no evidence in the record showing that an inmate exhausted his administrative remedies through the Administrative Remedy Program of the Mississippi Department of Corrections (MDOC), in accordance with Miss. Code Ann. § 47-5-803(2), the trial court should have stayed the proceedings for ninety days to allow time for the inmate to exhaust his administrative remedies; however, a reversal of the case would be futile because the trial court record was thorough, and the MDOC clearly provided the trial court with sufficient information to determine whether the inmate's sentence had been properly computed. Lee v. Kelly, 34 So. 3d 1203 (Miss. Ct. App. 2010).

Although an inmate was incarcerated outside of the state, the inmate was subject to imprisonment in Mississippi by virtue of a detainer, and therefore the trial court had jurisdiction to hear the inmate's request for habeas corpus relief to compute the amount of time inmate had to serve on his Mississippi sentence; nevertheless, the inmate was procedurally barred from proceeding with his post-conviction relief claim until he exhausted available administrative remedies. Putnam v. Epps, 963 So. 2d 1232 (Miss. Ct. App. 2007), writ of certiorari denied en banc by 964 So. 2d 508, 2007 Miss. LEXIS 503 (Miss. 2007).

Trial court erred in denying and dismissing a habeas corpus petition on the ground that petitioner failed to exhaust administrative remedies because under Miss. Code Ann. § 47-5-803(2), the trial court should have stayed the petition for 90 days so that the Mississippi DOC Administrative Remedies Program could consider and rule on petitioner's complaint. Henley v. Epps, 958 So. 2d 1265 (Miss. Ct. App. 2007).

Regardless of the fact that the trial court had jurisdiction, the inmate was procedurally barred from proceeding with his post-conviction relief claim until he exhausted the administrative remedies available through the Mississippi Department of Corrections, Miss. Code Ann. § 47-5-803(2). Putnam v. Epps, — So. 2d —, 2007 Miss. App. LEXIS 36 (Miss. Ct. App. Feb. 6, 2007), opinion withdrawn by, substituted opinion at 963 So. 2d 1232, 2007 Miss. App. LEXIS 421 (Miss. Ct. App. 2007).

Appellate court affirmed the denial of an inmate's petition for post-conviction relief and his claim that he should have been released after serving seven and one-half years of his 15 year sentence; neither the appellate court nor the trial court had jurisdiction to review his sentence because the inmate had not exhausted all of his administrative remedies as required by Miss. Code Ann. § 47-5-803(2). Sanders v. Miss. Dep't of Corr., 912 So. 2d 189 (Miss. Ct. App. 2005).

Inmate's amended petition claiming that the points classification system of the Mississippi Department of Corrections was racially discriminatory in violation of equal protection was properly dismissed for failure to state a claim. There was no indication that the inmate went through the Administrative Remedy Program before filing suit on his equal protection/racial discrimination claim as required by Miss. Code Ann. § 47-5-803(2). Adams v. Epps, 900 So. 2d 1210 (Miss. Ct. App. 2005), writ of certiorari dismissed by 901 So. 2d 1273, 2005 Miss. LEXIS 291 (Miss. 2005).

§ 47-5-805. Application of procedures to pending lawsuits.

Any offender who, on July 1, 1994, is a plaintiff in a lawsuit naming the state, the Department of Corrections or an official or an employee of the Department of Corrections as a defendant or defendants shall be furnished notice by certified mail of Sections 47-5-801 through 47-5-807 and the fact and date of the enactment of the administrative review procedure, and proof of notice of service of the offender plaintiff shall be filed in the offender's court record where such lawsuit is pending. Any offender so notified by certified mail shall, within thirty (30) days after receipt of such notice, commence administrative review, under the administrative review procedure, of the complaint which is the subject matter of his lawsuit. Any such pending lawsuit, on July 1, 1994, shall be stayed by the court for a period not to exceed ninety (90) days in order to require exhaustion of the remedies as provided under the administrative review procedure. If an offender fails to completely utilize the administrative review procedure during the period of the stay, then the court may consider this as a factor in deciding whether the case may proceed.

SOURCES: Laws, 1989, ch. 563, § 3; Laws, 1994, ch. 444, § 1, eff from and after July 1, 1994.

§ 47-5-807. Judicial review of agency decision.

Any offender who is aggrieved by an adverse decision rendered pursuant to any administrative review procedure under Sections 47-5-801 through 47-5-807 may, within thirty (30) days after receipt of the agency's final decision, seek judicial review of the decision.

SOURCES: Laws, 1989, ch. 563, § 4, eff from and after July 1, 1989.

JUDICIAL DECISIONS

1. Construction and applicability.
2. Time for filing.
3. Right to judicial review.
4. Mailbox rule.

1. Construction and applicability.

Miss. Code Ann. § 47-5-807 does not prescribe that the 30-day time limit to appeal from a final agency decision applies only to actions for damages, but rather to any action appealed from an administrative proceeding. Boler v. Bailey, 840 So. 2d 734 (Miss. Ct. App. 2003).

2. Time for filing.

Prisoner's failure to file his motion for judicial review of a decision of the Mississippi Department of Corrections denying his request for earned-time credit within the thirty days allowed by Miss. Code Ann. § 47-5-807 barred his appeal. Hill v. State, — So. 3d —, 2015 Miss. App. LEXIS 267 (Miss. Ct. App. May 19, 2015).

Motion for judicial review under Miss. Code Ann. § 47-5-807 was properly dismissed by the trial court because an inmate's underlying claims arising out of a 17-year-old conviction were untimely filed. Hearron v. Miss. Dep't of Corr., 22 So. 3d 1238 (Miss. Ct. App. 2009).

Prisoner's circuit court appeal of a jail-time credit grievance was untimely since it was not filed within thirty days after receipt of the final decision of the Mississippi Department of Corrections' Administrative Remedy Program. Stokes v. State, 984 So. 2d 1089 (Miss. Ct. App. 2008).

Appellate court affirmed the denial of an inmate's petition for writ of habeas corpus relief, which was treated as a petition for post-conviction relief, as under Miss. Code Ann. § 47-5-807, the inmate only had 30 days to appeal the denial of his grievance with the Mississippi Department of Corrections, and the inmate did not seek review until more than two months later. Moore v. Miss. Dep't of Corr., 936 So. 2d 941 (Miss. Ct. App. 2005), writ of certiorari denied by 2006 Miss. LEXIS 560 (Miss. Aug. 24, 2006).

Appellate court affirmed the denial of an inmate's petition for post-conviction relief and his claim that he should have been released after serving seven and one-half years of his 15 year sentence; neither the appellate court nor the trial court had jurisdiction to review his sentence because the inmate had not exhausted all of his administrative remedies as required by Miss. Code Ann. § 47-5-803(2) as the violations that caused him to lose earned time occurred between 1994 and 2000 and his motion for relief was not filed until 2003. Thus, the inmate did not comply with the 30-day time requirement in Miss. Code Ann. § 47-5-807. Sanders v. Miss. Dep't of Corr., 912 So. 2d 189 (Miss. Ct. App. 2005).

Trial court determined that defendant, having failed to seek judicial review within 30 days after receipt of the appropriate final decision, did not complete the final step required for judicial review; therefore, it properly determined that the trial court lacked authority to hear defendant's grievances on the merits. Taylor v. State, 919 So. 2d 209 (Miss. Ct. App. 2005).

Trial court's denial of defendant's petition for postconviction relief was properly denied because he had until January 31, 1999 to appeal an administrative judgment, but did not do so until September 19, 2000. Moore v. State, 897 So. 2d 997 (Miss. Ct. App. 2004), writ of certiorari denied by 898 So. 2d 679, 2005 Miss. LEXIS 243 (Miss. 2005).

Appellate court affirmed the trial court's denial of postconviction relief where the inmate failed to timely file his appeal within 30 days from the final adverse decision of the Mississippi Department of Corrections Administrative Remedy Program as required by Miss. Code Ann. § 47-5-807. Simmons v. Sparkman, 829 So. 2d 1289 (Miss. Ct. App. 2002).

Inmate's motion to show cause was properly dismissed by the trial court where to failed to seek timely judicial review of a department of corrections' administrative remedies program decision concerning prisoner privacy rights. The inmate failed to seek judicial review of the agency's final decision within the 30-day time limit of Miss. Code Ann. § 47-5-807. Edmond v. Anderson, 820 So. 2d 1 (Miss. Ct. App. 2002), writ of certiorari denied by 537 U.S. 959, 123 S. Ct. 383, 154 L. Ed. 2d 311, 2002 U.S. LEXIS 7760, 71 U.S.L.W. 3265 (2002).

Defendant's original petition was not filed until well past the allowable 30-day period; filing within the statutorily-mandated time was jurisdictional. Stanley v. Turner, 846 So. 2d 279 (Miss. Ct. App. 2002), writ of certiorari denied by 846 So. 2d 229, 2003 Miss. App. LEXIS 536 (Miss. Ct. App. 2003).

Defendant's right to assert his claim through a motion for post conviction relief claiming denial of his right to due process of law because he was not afforded a hearing before being terminated from the Regimented Inmate Discipline (RID) Program was time barred under this section. Brown v. State, 752 So. 2d 464 (Miss. Ct. App. 1999).

3. Right to judicial review.

Inmate's appeal of a judgment denying his motion to mandate parole eligibility on his life sentence pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act was dismissed under Miss. Code Ann. § 47-5-803(2) because the inmate did not exhaust his administrative remedies; the Mississippi Department of Corrections (MDOC) had determined that the inmate was ineligible for parole consideration by the parole board, but the record was completely bare as to any proof that the inmate ever exhausted his administrative remedies or even voiced his grievance through the MDOC's administrative-review procedure. Keys v. State, 67 So. 3d 783 (Miss. Ct. App. 2010), reversed by 67 So. 3d 758, 2011 Miss. LEXIS 389 (Miss. 2011).

Because there was clearly no evidence in the record showing that an inmate exhausted his administrative remedies through the Administrative Remedy Program of the Mississippi Department of Corrections (MDOC), in accordance with Miss. Code Ann. § 47-5-803(2), the trial court should have stayed the proceedings for ninety days to allow time for the inmate to exhaust his administrative remedies; however, a reversal of the case would be futile because the trial court record was thorough, and the MDOC clearly provided the trial court with sufficient information to determine whether the inmate's sentence had been properly computed. Lee v. Kelly, 34 So. 3d 1203 (Miss. Ct. App. 2010).

Inmate's disciplinary complaint should not have been dismissed for lack of jurisdiction because he made a timely filing after exhausting his administrative remedies, as required by Miss. Code Ann. § 47-5-803 and Miss. Code Ann. § 47-5-807; the circuit court did not perform its full review function when it determined the inmate's constitutional rights were not violated. Siggers v. Epps, 962 So. 2d 78 (Miss. Ct. App. 2007).

Although the inmate argued that he was placed in administrative segregation without review by a Mississippi Department of Corrections classification committee and administrative review in excess of 180 days, his assertion was not raised in an administrative review, nor brought before the circuit court, and as such was not reviewable by the appellate court. Hurns v. Miss. Dep't of Corr., 878 So. 2d 223 (Miss. Ct. App. 2004), writ of certiorari denied by 878 So. 2d 67, 2004 Miss. LEXIS 918 (Miss. 2004).

A prisoner's right to judicial review for administrative discipline under Miss. Code Ann. § 47-5-807 is limited by a preceding section, Miss. Code Ann. § 47-5-803, which provides that no state court shall entertain an offender's grievance unless and until such offender shall have exhausted the remedies as provided in such procedure. Boler v. Bailey, 840 So. 2d 734 (Miss. Ct. App. 2003).

There was jurisdiction for a court to consider claims regarding the denial of various credits to sentences. Hill v. State, 838 So. 2d 994 (Miss. Ct. App. 2002).

While an inmate had no liberty interest in his prison classification, the right to review of final decisions of the classification committee was conferred by statute; thus, the circuit court had jurisdiction to review the decision of the Mississippi Department of Corrections which removed the inmate from a house arrest program and placed him in the general prison population for a rule violation. Edwards v. Booker, 796 So. 2d 991 (Miss. 2001).

4. Mailbox rule.

Inmate's complaint alleging that the prison officials failed to protect him from an assault by another inmate was timely filed under Miss. Code Ann. § 47-5-807 where the inmate acknowledged receipt of the denial of his claim on March 24, the prison mail log indicated the inmate mailed "legal mail" to the circuit court clerk's office on April 20, and that was the only mailing the inmate sent to the circuit court clerk. Clay v. Epps, 953 So. 2d 264 (Miss. Ct. App. 2007).

Trial court erred in dismissing inmate's complaint as untimely as under the "prison mailbox rule," the date on which a pro se document was deemed filed was the date the prisoner placed it in the mail, not the date it was received by a court clerk; as the prisoner's proof of service had the document mailed as timely, but it was not received by the county clerk in a timely manner, and the prison mail log had no record of the mailing, the dismissal of the inmate's complaint was reversed. Easley v. Roach, 879 So. 2d 1041 (Miss. 2004).

Dismissal of the inmate's complaint against the Mississippi Department of Corrections was improper where the mailbox rule applied to his complaint timely signed on July 5, 2001, two days prior to the 30-day deadline, Miss. Code Ann. § 47-5-807. Maze v. Miss. Dep't of Corr., 854 So. 2d 1090 (Miss. Ct. App. 2003).

STATE OFFENDERS SERVING SENTENCES IN COUNTY JAILS

SEC.	
47-5-901.	Service of sentence in county jail if space unavailable in state facility; reimbursement of costs; governmental liability [Repealed effective July 1, 2016].
47-5-903.	Other conditions under which sentence may be served in county jail; governmental liability [Repealed effective July 1, 2016].
47-5-905.	Processing and classification of inmates [Repealed effective July 1, 2016].
47-5-907.	Removal of state inmate from county jail; petition; grounds; immunity from liability [Repealed effective July 1, 2016].
47-5-909.	Incarceration in county jails as temporary measure only [Repealed effective July 1, 2016].
47-5-911.	Repeal of Sections 47-5-901 through 47-5-911 [Repealed effective July 1, 2016].

§ 47-5-901. Service of sentence in county jail if space unavailable in state facility; reimbursement of costs; governmental liability [Repealed effective July 1, 2016].

(1) Any person committed, sentenced or otherwise placed under the custody of the Department of Corrections, on order of the sentencing court and subject to the other conditions of this subsection, may serve all or any part of his sentence in the county jail of the county wherein such person was convicted if the Commissioner of Corrections determines that physical space is not

available for confinement of such person in the state correctional institutions. Such determination shall be promptly made by the Department of Corrections upon receipt of notice of the conviction of such person. The commissioner shall certify in writing that space is not available to the sheriff or other officer having custody of the person. Any person serving his sentence in a county jail shall be classified in accordance with Section 47-5-905.

(2) If state prisoners are housed in county jails due to a lack of capacity at state correctional institutions, the Department of Corrections shall determine the cost for food and medical attention for such prisoners. The cost of feeding and housing offenders confined in such county jails shall be based on actual costs or contract price per prisoner. In order to maximize the potential use of county jail space, the Department of Corrections is encouraged to negotiate a reasonable per day cost per prisoner, which in no event may exceed Twenty Dollars ($20.00) per day per offender.

(3)(a) Upon vouchers submitted by the board of supervisors of any county housing persons due to lack of space at state institutions, the Department of Corrections shall pay to such county, out of any available funds, the actual cost of food, or contract price per prisoner, not to exceed Twenty Dollars ($20.00) per day per offender, as determined under subsection (2) of this section for each day an offender is so confined beginning the day that the Department of Corrections receives a certified copy of the sentencing order and will terminate on the date on which the offender is released or otherwise removed from the custody of the county jail. The department, or its contracted medical provider, will pay to a provider of a medical service for any and all incarcerated persons from a correctional or detention facility an amount based upon negotiated fees as agreed to by the medical care service providers and the department and/or its contracted medical provider. In the absence of negotiated discounted fee schedule, medical care service providers will be paid by the department, or its contracted medical service provider, an amount no greater than the reimbursement rate applicable based on the Mississippi Medicaid reimbursement rate. The board of supervisors of any county shall not be liable for any cost associated with medical attention for prisoners who are pretrial detainees or for prisoners who have been convicted that exceeds the Mississippi Medicaid reimbursement rate or the reimbursement provided by the Department of Corrections, whichever is greater. This limitation applies to all medical care services, durable and nondurable goods, prescription drugs and medications. Such payment shall be placed in the county general fund and shall be expended only for food and medical attention for such persons.

(b) Upon vouchers submitted by the board of supervisors of any county housing offenders in county jails pending a probation or parole revocation hearing, the department shall pay the reimbursement costs provided in paragraph (a).

(c) If the probation or parole of an offender is revoked, the additional cost of housing the offender pending the revocation hearing shall be assessed as part of the offender's court cost and shall be remitted to the department.

(4) A person, on order of the sentencing court, may serve not more than twenty-four (24) months of his sentence in a county jail if the person is classified in accordance with Section 47-5-905 and the county jail is an approved county jail for housing state inmates under federal court order. The sheriff of the county shall have the right to petition the Commissioner of Corrections to remove the inmate from the county jail. The county shall be reimbursed in accordance with subsection (2) of this section.

(5) The Attorney General of the State of Mississippi shall defend the employees of the Department of Corrections and officials and employees of political subdivisions against any action brought by any person who was committed to a county jail under the provisions of this section.

(6) This section does not create in the Department of Corrections, or its employees or agents, any new liability, express or implied, nor shall it create in the Department of Corrections any administrative authority or responsibility for the construction, funding, administration or operation of county or other local jails or other places of confinement which are not staffed and operated on a full-time basis by the Department of Corrections. The correctional system under the jurisdiction of the Department of Corrections shall include only those facilities fully staffed by the Department of Corrections and operated by it on a full-time basis.

(7) An offender returned to a county for post-conviction proceedings shall be subject to the provisions of Section 99-19-42 and the county shall not receive the per-day allotment for such offender after the time prescribed for returning the offender to the Department of Corrections as provided in Section 99-19-42.

SOURCES: Laws, 1992, ch. 547, § 1; Laws, 1994 Ex Sess, ch. 26, § 16; Laws, 1995, ch. 566, § 2; reenacted without change, Laws, 1997, ch. 408, § 1; reenacted without change, Laws, 1998, ch. 419, § 1; reenacted without change, Laws, 2002, ch. 426, § 1; Laws, 2002, ch. 624, § 4; reenacted without change, Laws, 2003, ch. 421, § 1; reenacted and amended, Laws, 2004, ch. 537, § 1; reenacted without change, Laws, 2005, ch. 395, § 1; reenacted and amended, Laws, 2007, ch. 603, § 1; reenacted without change, Laws, 2008, ch. 323, § 1; Laws, 2010, ch. 490, § 1; reenacted without change, Laws, 2012, ch. 317, § 1; Laws, 2014, ch. 457, § 59, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 1 of ch. 426, Laws of 2002, eff from and after July 1, 2002 (approved March 20, 2002), amended this section. Section 4 of ch. 624, Laws of 2002, effective from and after July 1, 2002 (approved April 25, 2002), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 624, Laws of 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — For the repeal date of this section, see § 47-5-911.

Laws of 2004, ch. 537, § 8 provides:

"SECTION 8. The Performance Evaluation and Expenditure Review Committee shall conduct a study to determine the actual per day cost of housing state inmates in county jails. The PEER Committee shall complete such determination and shall report with the Governor, Lieutenant Governor, Speaker of the House and Chairmen of the Senate and House Corrections Committees no later than December 1, 2004."

Amendment Notes — The 2014 amendment, in (3)(b), deleted "out of any available funds," following "the department shall pay"; and in (4), added "of this section" to the end.

Cross References — Department of Corrections may create a postconviction DNA database see § 47-5-183.

ATTORNEY GENERAL OPINIONS

Certification as to whether there is space available within a Department of Corrections facility should be in writing on individual basis. Lucas, Oct. 12, 1992, A.G. Op. #92-0734.

If prisoner is sentenced by circuit judge to department of corrections and committed to county jail, then sheriff can not simply refuse to take prisoner because of overcrowding. Barrett, Jan. 12, 1994, A.G. Op. #93-0832.

The Mississippi Department of Corrections is under no obligation to pay counties for the costs associated with the care of inmates participating in a joint state/county work program under Section 47-5-401(1). Epps, Feb. 28, 2003, A.G. Op. #03-0764.

The state's responsibility for housing costs of prisoners commences the day the Department of Corrections receives a certified copy of the sentencing order regardless of when MDOC finishes the paperwork to induct an inmate into the system. Robinson, Mar. 4, 2005, A.G. Op. 04-0626.

§ 47-5-903. Other conditions under which sentence may be served in county jail; governmental liability [Repealed effective July 1, 2016].

(1) A person committed, sentenced or otherwise placed under the custody of the Department of Corrections, on order of the sentencing court, may serve his sentence in the county jail of the county where convicted if all of the following conditions are complied with:

(a) The person must be classified in accordance with Section 47-5-905;

(b) The person must not be classified as in need of close supervision;

(c) The sheriff of the county where the person will serve his sentence must request in writing that the person be allowed to serve his sentence in that county jail;

(d) After the person is classified and returned to the county, the county shall assume the full and complete responsibility for the care and expenses of housing such person; and

(e) The county jail must be an approved county jail for housing state inmates under federal court order.

(2) This section does not apply to inmates housed in county jails due to lack of space at state correctional facilities. The department shall not reimburse the county for the expense of housing an inmate under this section.

(3) The Attorney General of the State of Mississippi shall defend the employees of the Department of Corrections and officials and employees of political subdivisions against any action brought by any person who was committed to a county jail under the provisions of this section.

(4) The state, the Department of Corrections, and its employees or agents, shall not be liable to any person or entity for an inmate held in a county jail under this section.

SOURCES: Laws, 1992, ch. 547, § 2; reenacted without change, Laws, 1997, ch. 408, § 2; reenacted without change, Laws, 1998, ch. 419, § 2; reenacted without change, Laws, 1999, ch. 538, § 2; reenacted without change, Laws, 2002, ch. 426, § 2; reenacted without change, Laws, 2003, ch. 421, § 2; reenacted without change, Laws, 2004, ch. 537, § 2; reenacted without change, Laws, 2005, ch. 395, § 2; reenacted without change, Laws, 2007, ch. 603, § 2; reenacted without change, Laws, 2008, ch. 323, § 2; reenacted without change Laws, 2012, ch. 317, § 2, eff from and after passage (approved Apr. 5, 2012.)

Editor's Note — For the repeal date of this section, see § 47-5-911.

ATTORNEY GENERAL OPINIONS

The Mississippi Department of Corrections is under no obligation to pay counties for the costs associated with the care of inmates participating in a joint state/county work program under Section 47-5-401(1). Epps, Feb. 28, 2003, A.G. Op. #03-0764.

§ 47-5-905. Processing and classification of inmates [Repealed effective July 1, 2016].

(1) All persons placed under the custody of the Department of Corrections shall be processed at a reception and diagnostic center of the Department of Corrections and then be assigned to an appropriate correctional facility for a complete and thorough classification, not to exceed ninety (90) days, unless the department determines that a person can be properly processed and classified at the county jail in accordance with the department's classification plan.

(2) The Department of Corrections shall develop a plan for the processing and classification of inmates in county jails and shall implement the plan by January 1, 1993.

SOURCES: Laws, 1992, ch. 547, § 3; reenacted without change, Laws, 1997, ch. 408, § 3; reenacted without change, Laws, 1998, ch. 419, § 3; reenacted without change, Laws, 1999, ch. 538, § 3; reenacted without change, Laws, 2002, ch. 426, § 3; reenacted without change, Laws, 2003, ch. 421, § 3; reenacted without change, Laws, 2004, ch. 537, § 3; reenacted without change, Laws, 2005, ch. 395, § 3; reenacted without change, Laws, 2007, ch. 603, § 3; reenacted without change, Laws, 2008, ch. 323, § 3; reenacted without change, Laws, 2012, ch. 317, § 3, eff from and after passage (approved Apr. 5, 2012.)

Editor's Note — For the repeal date of this section, see § 47-5-911.

Cross References — Person serving sentence in county jail to be classified in accordance with this section, see §§ 47-5-901, 47-5-903.

§ 47-5-907. Removal of state inmate from county jail; petition; grounds; immunity from liability [Repealed effective July 1, 2016].

The sheriff of any county in this state shall have the right to petition the Commissioner of the Department of Corrections to remove a state inmate from the county jail in such county to the State Penitentiary. The commissioner shall remove such inmate from such county jail if the sheriff of such county sets forth just cause in his petition indicating why an inmate should be removed from such county jail to the State Penitentiary.

Just cause is established if such sheriff can sufficiently prove that such inmate has a dangerous behavior or sufficiently prove that there is no available or suitable medical facility where such inmate can be provided suitable medical services. The commissioner shall respond in writing to the petition no later than thirty (30) days after the receipt of such petition. If the petition to remove such inmate is denied by the commissioner, such sheriff and his agents shall have from the date of denial absolute immunity from liability for any injury resulting from subsequent behavior or from medical consequences regarding such inmate, provided that such injury resulted from conditions which were set forth in such petition.

SOURCES: Laws, 1992, ch. 547, § 4; reenacted without change, Laws, 1997, ch. 408, § 4; reenacted without change, Laws, 1998, ch. 419, § 4; reenacted without change, Laws, 1999, ch. 538, § 4; reenacted without change, Laws, 2002, ch. 426, § 4; reenacted without change, Laws, 2003, ch. 421, § 4; reenacted without change, Laws, 2004, ch. 537, § 4; reenacted without change, Laws, 2005, ch. 395, § 4; reenacted without change, Laws, 2007, ch. 603, § 4; reenacted without change, Laws, 2008, ch. 323, § 4; reenacted without change, Laws, 2012, ch. 317, § 4, eff from and after passage (approved Apr. 5, 2012.)

Editor's Note — For the repeal date of this section, see § 47-5-911.

ATTORNEY GENERAL OPINIONS

If sheriff asks that inmate be removed from his or her jail, agency is authorized to start reimbursing county at that point. Lucas, Oct. 12, 1992, A.G. Op. #92-0734.

§ 47-5-909. Incarceration in county jails as temporary measure only [Repealed effective July 1, 2016].

It is the policy of the Legislature that all inmates be removed from county jails as early as practicable. Sections 47-5-901 through 47-5-907 are temporary measures to help alleviate the immediate operating capacity limitations at correctional facilities and are not permanent measures to be included in the long-term operating capacity of the correctional system.

SOURCES: Laws, 1992, ch. 547, § 5; reenacted without change, Laws, 1997, ch. 408, § 5; reenacted without change, Laws, 1998, ch. 419, § 5; reenacted

without change, Laws, 1999, ch. 538, § 5; reenacted without change, Laws, 2002, ch. 426, § 5; reenacted without change, Laws, 2003, ch. 421, § 5; reenacted without change, Laws, 2004, ch. 537, § 5; reenacted without change, Laws, 2005, ch. 395, § 5; reenacted without change, Laws, 2007, ch. 603, § 5; reenacted without change, Laws, 2008, ch. 323, § 5; reenacted without change, Laws, 2012, ch. 317, § 5, eff from and after passage (approved Apr. 5, 2012.)

Editor's Note — For the repeal date of this section, see § 47-5-911.

ATTORNEY GENERAL OPINIONS

Notification to be given sheriff when space becomes available in Department of Corrections Facility for particular inmate is left to sound discretion of Commissioner of Department of Corrections. Lucas, Oct. 12, 1992, A.G. Op. #92-0734.

§ 47-5-911. Repeal of Sections 47-5-901 through 47-5-911 [Repealed effective July 1, 2016].

Sections 47-5-901 through 47-5-911 shall stand repealed on July 1, 2016.

SOURCES: Laws, 1992, ch. 547, § 6; Laws, 1994, ch. 311, § 1; Laws, 1995, ch. 418, § 1; Laws, 1997, ch. 408, § 6; Laws, 1998, ch. 419, § 6; Laws, 1999, ch. 538, § 6; Laws, 2001, ch. 364, § 1; Laws, 2003, ch. 421, § 6; Laws, 2004, ch. 537, § 6; Laws, 2005, ch. 395, § 6; Laws, 2007, ch. 354, § 1; Laws, 2007, ch. 603, § 6; Laws, 2008, ch. 323, § 6; reenacted and amended Laws, 2012, ch. 317, § 6; Laws, 2014, ch. 457, § 60, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 1 of ch. 354, Laws of 2007, effective upon passage (approved March 15, 2007), amended this section. Section 6 of ch. 603, Laws of 2007, effective upon passage (approved April 21, 2007), also amended this section. As set out above, this section reflects the language of Section 6 of ch. 603, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2014 amendment extended the repealer provision from "July 1, 2014" to "July 1, 2016."

INCARCERATION OF STATE OFFENDERS IN COUNTY OWNED OR LEASED CORRECTIONAL FACILITIES

SEC.
47-5-931. Authorization for incarceration of state offenders at county or regional correctional facility.
47-5-933. Contracts for incarceration of state offenders in county facilities; medical care.
47-5-934. Extension of contracts for incarceration in event of disruption due to natural disaster.
47-5-935. Sheriff of county designated Chief Corrections Officer for facility; responsibilities; additional compensation.
47-5-937. Exercise of power and authority regarding facility; exemption from certain requirements or restrictions.

47-5-938. Offenders in counties to participate in work programs; implementation; reimbursement of costs incurred due to utilization of offenders; offender's compensation fund; canteen operations fund.
47-5-939. Housing pretrial detainees, county offenders and other persons.
47-5-940. Authorization for drug and alcohol treatment pilot program at Bolivar County Regional Facility [Repealed effective July 3, 2018].
47-5-941. Authorization to contract with certain Wilkinson County authorities for private incarceration of state inmates.
47-5-942. Authorization to contract with a county to be determined by Department of Corrections for maximum security regional correctional facility.
47-5-943. Contracts for incarceration; compliance with standards and statutes.
47-5-945. Contract restrictions; time; terms; medical care of offenders.
47-5-947. Repealed.
47-5-949. Continuing education; high school level degree; vocational education.
47-5-951. Alcohol and drug counseling and treatment.
47-5-953. Construction of subsequent facilities; locations; requirements and standards.

§ 47-5-931. Authorization for incarceration of state offenders at county or regional correctional facility.

(1) The Department of Corrections, in its discretion, may contract with the board of supervisors of one or more counties and/or with a regional facility operated by one or more counties, to provide for housing, care and control of offenders who are in the custody of the State of Mississippi. Any facility owned or leased by a county or counties for this purpose shall be designed, constructed, operated and maintained in accordance with American Correctional Association standards, and shall comply with all constitutional standards of the United States and the State of Mississippi, and with all court orders that may now or hereinafter be applicable to the facility. If the Department of Corrections contracts with more than one (1) county to house state offenders in county correctional facilities, excluding a regional facility, then the first of such facilities shall be constructed in Sharkey County and the second of such facilities shall be constructed in Jefferson County.

(2) The Department of Corrections shall contract with the board of supervisors of the following counties to house state inmates in regional facilities: (a) Marion and Walthall Counties; (b) Carroll and Montgomery Counties; (c) Stone and Pearl River Counties; (d) Winston and Choctaw Counties; (e) Kemper and Neshoba Counties; (f) Holmes County and any contiguous county in which there is located an unapproved jail; and (g) Bolivar County and any contiguous county in which there is located an unapproved jail. The Department of Corrections may contract with the board of supervisors of the following counties to house state inmates in regional facilities: (a) Yazoo County, (b) Chickasaw County, (c) George and Greene Counties, (d) Washington County, (e) Hinds County, and (f) Alcorn County. The Department of Corrections shall decide the order of priority of the counties listed in this subsection with which it will contract for the housing of state inmates. For the purposes of this subsection, the term "unapproved jail" means any jail that the local grand jury determines should be condemned or has found to be of substandard condition or in need of substantial repair or reconstruction.

(3) In addition to the offenders authorized to be housed under subsection (1) of this section, the Department of Corrections may contract with the Kemper and Neshoba regional facility to provide for housing, care and control of not more than seventy-five (75) additional offenders who are in the custody of the State of Mississippi.

SOURCES: Laws, 1995, ch. 585, § 1; Laws, 1997, ch. 457, § 1; Laws, 1999, ch. 526, § 1; Laws, 2004, ch. 472, § 1; Laws, 2007, ch. 539, § 1; Laws, 2013, ch. 422, § 1; Laws, 2014, ch. 321, § 1, eff from and after passage (approved Mar. 25, 2014.)

Amendment Notes — The 2014 amendment, in (1), deleted "not more than three hundred (300)" following ", to provide for housing, care and control of"; and in (3), deleted "number of" following "In addition to the."

Cross References — Department of Corrections may create a postconviction DNA database see § 47-5-183.

§ 47-5-933. Contracts for incarceration of state offenders in county facilities; medical care.

The Department of Corrections may contract for the purposes set out in Section 47-5-931 for a period of not more than twenty (20) years. The contract may provide that the Department of Corrections pay a fee of up to Twenty-nine Dollars and Seventy-four Cents ($29.74) per day for each offender that is housed in the facility. The Department of Corrections may include in the contract, as an inflation factor, a three percent (3%) annual increase in the contract price. The state shall retain responsibility for medical care for state offenders to the extent that is required by law.

SOURCES: Laws, 1995, ch. 585, § 2; Laws, 2007, ch. 539, § 2, eff from and after July 1, 2007.

§ 47-5-934. Extension of contracts for incarceration in event of disruption due to natural disaster.

If a regional facility authorized under Section 47-5-931 experiences a disruption in the housing of state inmates due to a natural disaster in which the Governor has declared a disaster emergency under the laws of this state or the President of the United States has declared an emergency or major disaster to exist in this state, notwithstanding the limitation prescribed in Section 47-5-933, the term of the contract entered into by the Department of Corrections and the board of supervisors of the involved county or counties may be extended for a period not to exceed five (5) years.

SOURCES: Laws, 2002, ch. 617, § 14, eff from and after July 1, 2002.

§ 47-5-935. Sheriff of county designated Chief Corrections Officer for facility; responsibilities; additional compensation.

Concurrent with the execution of a contract for housing of state offenders as authorized by Sections 47-5-931 through 47-5-941, the sheriff of a county where the facility is located is designated as the Chief Corrections Officer for the facility housing state offenders, and in that capacity, shall assume responsibility for management of the corrections facility and for the provision of the care and control of the state offenders housed therein. The sheriff shall be subject to the direction of the department for management of the correctional facility. In addition to the compensation provided by Section 25-3-25, the sheriff shall receive Fifteen Thousand Six Hundred Dollars ($15,600.00) as compensation for the duties specified in Sections 47-5-931 through 47-5-941.

SOURCES: Laws, 1995, ch. 585, § 3, eff from and after passage (approved April 7, 1995).

ATTORNEY GENERAL OPINIONS

The sheriff has responsibility for management of a regional correctional facility and such a facility is exempt from the requirements of law otherwise applicable to a county; however, after the budget for the facility has been approved by the county board of supervisors, the sheriff cannot unilaterally increase the salary of the warden. Burgoon, Jr., Nov. 16, 2001, A.G. Op. #01-0671.

§ 47-5-937. Exercise of power and authority regarding facility; exemption from certain requirements or restrictions.

Sections 47-5-931 through 47-5-941 shall be full and complete authority for the exercise of all powers and authority granted herein and no requirements or restrictions of law which would otherwise be applicable to acts of the county or sheriff or the Department of Corrections shall be applicable except as expressly provided herein. The sheriff is expressly authorized to employ counsel to represent the facility to be paid a salary within the range allowed for a legal assistant to a district attorney with the employment to continue for a period of time not to exceed the duration of the indebtedness incurred for construction of the facility. The county or counties shall pay this cost and other costs incurred in the operation of the facility from the proceeds of the funds derived from the financing of the project and the housing of offenders.

SOURCES: Laws, 1995, ch. 585, § 4, eff from and after passage (approved April 7, 1995).

ATTORNEY GENERAL OPINIONS

The statute creates a position for counsel to last as long as the indebtedness incurred for construction of a facility and gives the sheriff discretionary authority to employ an attorney to fill that position on an at-will basis; however, this does not authorize a sheriff to bind his successors in office and a subsequent sheriff may exercise the same discretion and, therefore, any employment contract entered into by a prior sheriff under the statute is voidable by a subsequent sheriff. Ballard, Nov. 20, 2001, A.G. Op. #01-0617.

The statute contemplates that an attorney hired pursuant to the statute will be a full-time rather than a part-time employee, and that he will be paid a certain salary. Ballard, Nov. 20, 2001, A.G. Op. #01-0617.

The sheriff has responsibility for management of a regional correctional facility and such a facility is exempt from the requirements of law otherwise applicable to a county; however, after the budget for the facility has been approved by the county board of supervisors, the sheriff cannot unilaterally increase the salary of the warden. Burgoon, Jr., Nov. 16, 2001, A.G. Op. #01-0671.

§ 47-5-938. Offenders in counties to participate in work programs; implementation; reimbursement of costs incurred due to utilization of offenders; offender's compensation fund; canteen operations fund.

(1) Offenders are encouraged to participate in work programs. The chief corrections officer as created in Section 47-5-935, with ratification of the board of supervisors of the county in which a correctional facility established pursuant to Sections 47-5-931 through 47-5-941, is located, may enter into agreements to provide work for any state offender housed in the facility, with the approval of the Commissioner of Corrections, to perform any work:

(a) Authorized in the Mississippi Prison Industries Act of 1990 as provided in Sections 47-5-531 through 47-5-575;

(b) Authorized in the Prison Agricultural Enterprises Act as provided in Sections 47-5-351 through 47-5-357;

(c) Authorized in the Penitentiary-Made Goods Law of 1978 as provided in Sections 47-5-301 through 47-5-331;

(d) Authorized in the Public Service Work Programs Act as provided in Sections 47-5-401 through 47-5-421;

(e) Authorized in Section 47-5-431, which authorizes the sheriff to use county or state offenders to pick up trash along public roads and state highways.

(2) The chief corrections officer shall promulgate rules and regulations as may be necessary to govern the work performance of the offenders for the parties to the agreements. Political subdivisions of the State of Mississippi including but not limited to counties, municipalities, school districts, drainage districts, water management districts and joint county-municipal endeavors are to have free use of the offender's labor but are responsible for reimbursing the facility for costs of transportation, guards, meals and other necessary costs when the inmates are providing work for that political body. Offenders may be compensated for work performed if the agreement so provides.

(3) There is created a special fund in the county treasury to be known as the "offender's compensation fund." All compensation paid to offenders shall be placed in the special fund for use by the offenders to purchase certain goods

and other items of value as authorized in Section 47-5-109, for offenders housed in state correctional facilities. As provided in Section 47-5-194, no cash is to be paid to offenders. The agreement shall provide that a certain portion of the compensation shall be used for the welfare of the offenders. All money collected from the regional jail canteen operations shall be placed in a county special fund. Expenditures from that fund can be made by the chief corrections officer for any lawful purpose that is in the best interest and welfare of the offenders. The chief corrections officer, his employees and the county or counties owning the facility are given the authority necessary to carry out the provisions of this section.

(4) The provisions of this section shall be supplemental to any other provisions of law regarding offender labor and work programs.

SOURCES: Laws, 1996, ch. 547, § 34; Laws, 2001, ch. 398, § 1, eff from and after July 1, 2001.

§ 47-5-939. Housing pretrial detainees, county offenders and other persons.

In addition to housing offenders for the Department of Corrections, the Chief Corrections Officer may house pretrial detainees, county offenders and other persons legally subject to incarceration by order of a court of competent jurisdiction. All offenders are to be housed in accordance with American Corrections Association standards.

SOURCES: Laws, 1995, ch. 585, § 5, eff from and after passage (approved April 7, 1995).

ATTORNEY GENERAL OPINIONS

A "court of competent jurisdiction" as referred to in Miss. Code Section 47-5-939 means a court within the Mississippi State Judicial System, and a Regional Correctional Facility is not allowed to contract with another State or with the United States for the housing of inmates. Weissinger, July 18, 1997, A.G. Op. #97-0386.

§ 47-5-940. Authorization for drug and alcohol treatment pilot program at Bolivar County Regional Facility [Repealed effective July 3, 2018].

(1)(a) The Department of Corrections may contract with the Bolivar County Regional Facility for a five-year pilot program dedicated to an intensive and comprehensive alcohol and other drug treatment program for not more than two hundred fifty (250) inmates. The Bolivar County Regional Facility shall have the option of canceling the contract for the drug treatment program after giving the Department of Corrections thirty (30) days' notice of its intent to cancel. The program shall be a prison-based treatment program designed to reduce substance abuse by inmates, correct dysfunctional thinking and behavioral patterns, and prepare inmates to make a successful and crime-free readjustment to the community.

(b) The Department of Corrections shall reimburse the Bolivar County Regional Facility at the per diem rate allowed under Section 47-5-933.

(2)(a) An inmate who is within eighteen (18) months of his earned release date or parole date may be placed in the program.

(b) The Department of Corrections shall remove any inmate within seventy-two (72) hours after being notified by the Bolivar County Regional Facility that the inmate is violent or refuses to participate in the drug treatment program.

(3) The program shall consist, but is not limited to, the following components:

(a) An assessment and placement component using a recidivism needs assessment of the inmates.

(b) An intensive and comprehensive treatment and rehabilitation component which addresses the specific drug or alcohol problem of the inmate. This component shall include relapse prevention strategies and anger management strategies.

(c) An aftercare post-release component that has a specific transition plan for each inmate. The transition plan must address specific post-release needs such as employment, housing, medical care, relapse prevention and treatment. The plan shall require personnel to assist the inmate with these needs and to assist in finding community-based programs for the inmate. The plan shall require the inmate to be tracked in at least thirty-day intervals to measure compliance with his established transition plan.

(d) A monitoring assessment of recidivism containing post-release history of substance abuse, breaches of trust, arrests, convictions, employment, community functioning, and marital and family interaction.

(4) The department shall file a report annually on the program with specific data on recidivism of inmates including the data required in subsection (3)(d).

(5) The program authorized under this section may be renewed if it meets performance requirements as may be determined by the Legislature.

(6) This section shall be repealed on July 3, 2018.

SOURCES: Laws, 2002, ch. 617, § 13; Laws, 2007, ch. 534, § 1; Laws, 2009, ch. 504, § 1; reenacted and amended, Laws, 2012, ch. 393, § 1; Laws, 2015, ch. 318, § 1; Laws, 2015, ch. 463, § 3, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 1 of ch. 318, Laws of 2015, effective from and after passage (approved March 13, 2015), amended this section. Section 3 of ch. 463, Laws of 2015, effective from and after July 1, 2015 (approved April 20, 2015), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 463, Laws of 2015, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Amendment Notes — The first 2015 amendment (ch. 318), extended the repealer provision from “July 3, 2015” to “July 3, 2018” at the end of (6).

The second 2015 amendment (ch. 463), deleted "and regimented discipline strategies" from the end of (3)(b), and made related stylistic changes; and extended the repealer provision in (6), from "July 3, 2015" to "July 3, 2018."

§ 47-5-941. Authorization to contract with certain Wilkinson County authorities for private incarceration of state inmates.

In addition to any other authority granted by law, the Department of Corrections may contract with the Wilkinson County industrial development or economic development authority for the private incarceration of not more than one thousand (1,000) state inmates at a facility in Wilkinson County. Any such contract must comply with Sections 47-5-1211 through 47-5-1227.

SOURCES: Laws, 1995, ch. 585, § 6, eff from and after passage (approved April 7, 1995).

ATTORNEY GENERAL OPINIONS

The board of alderman of the Town of Woodville may contract with Corrections Corporation of America to incarcerate Town of Woodville prisoners at the private facility in Wilkinson County. Wilkerson, January 16, 1998, #97-0790.

§ 47-5-942. Authorization to contract with a county to be determined by Department of Corrections for maximum security regional correctional facility.

(1) The Department of Corrections, in its discretion, may contract with the board of supervisors of a county to be determined by the department, to house not more than five hundred (500) adult male maximum security state inmates in a maximum security regional correctional facility constructed only with local, federal or private funds.

(2) The Department of Corrections may contract for a period of not more than twenty-five (25) years. The contract shall comply with the cost-savings requirements provided in Section 47-5-1211. The state shall retain responsibility for medical care for state offenders to the extent that is required by law.

SOURCES: Laws, 2008, ch. 536, § 1, eff from and after July 1, 2008.

§ 47-5-943. Contracts for incarceration; compliance with standards and statutes.

The Mississippi Department of Corrections may contract with the Walnut Grove Correctional Authority or the governing authorities of the Municipality of Walnut Grove, Leake County, Mississippi, to provide for the private housing, care and control of not more than one thousand five hundred (1,500) offenders who are in the custody of the Department of Corrections at a maximum security facility in Walnut Grove. A county or circuit judge shall not order any offender to be housed in the correctional facility authorized in Sections

47-5-943 through 47-5-953. Commitment of offenders shall not be to this facility, but shall be to the jurisdiction of the department. The commissioner shall assign newly sentenced offenders to an appropriate facility consistent with public safety. Any facility owned or leased by the Walnut Grove Correctional Authority or the Municipality of Walnut Grove for this purpose shall be designed, constructed, operated and maintained in accordance with American Correctional Association standards, and shall comply with all constitutional standards of the United States and the State of Mississippi and with all court orders that may now or hereinafter be applicable to the facility. The contract must comply with Sections 47-5-1211 through 47-5-1227.

SOURCES: Laws, 1998, ch. 562, § 1; Laws, 2002, ch. 579, § 1; Laws, 2004, ch. 537, § 7; Laws, 2005, ch. 517, § 1; Laws, 2007, ch. 417, § 1; Laws, 2012, ch. 489, § 1, eff from and after passage (approved Apr. 26, 2012.)

Editor's Note — Laws of 2004, ch. 537, § 8 provides:

"SECTION 8. The Performance Evaluation and Expenditure Review Committee shall conduct a study to determine the actual per day cost of housing state inmates in county jails. The PEER Committee shall complete such determination and shall report with the Governor, Lieutenant Governor, Speaker of the House and Chairmen of the Senate and House Corrections Committees no later than December 1, 2004."

Cross References — Contract restrictions, see § 47-5-945.

Continuing education leading to high school diploma or GED and vocational education to be provided juvenile offenders, see § 47-5-949.

Provision of alcohol and drug counseling and treatment, see § 47-5-951.

§ 47-5-945. Contract restrictions; time; terms; medical care of offenders.

The Department of Corrections shall contract for the purposes set out in Section 47-5-943 for a period of not more than twenty (20) years. The Department of Corrections may include in the contract, as an inflation factor, a three percent (3%) annual increase in the contract price. The state shall retain responsibility for medical care for state offenders to the extent that is required by law.

SOURCES: Laws, 1998, ch. 562, § 2, eff from and after passage (approved April 17, 1998).

§ 47-5-947. Repealed.

Repealed by Laws of 2012, ch. 395, § 1, effective July 1, 2012.

§ 47-5-947. [Laws, 1998, ch. 562, § 3, eff from and after passage (approved April 17, 1998).]

Editor's Note — Former § 47-5-947 provided for the implementation of the regimented inmate discipline program at the Walnut Grove Correctional Facility.

§ 47-5-949. Continuing education; high school level degree; vocational education.

The correctional facility authorized in Section 47-5-943 shall provide any juvenile offender housed in the facility with continuing education throughout his incarceration which leads to the presentation of a high school diploma or High School Equivalency Diploma equivalent. The facility also shall provide a program of vocational education, which is to be included in the continuing education program for a high school diploma or High School Equivalency Diploma equivalent.

SOURCES: Laws, 1998, ch. 562, § 4; Laws, 2014, ch. 398, § 15, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "High School Equivalency Diploma" for "General Education Development (GED)" in the first and second sentences.

ATTORNEY GENERAL OPINIONS

Even though this section does require that the Walnut Grove Correctional Authority must provide any juvenile offender incarcerated therein with continuing education and vocational education which leads to a high school diploma or General Education Development equivalent, no authority is given for it to act in the capacity of a school board. Webb, Dec. 5, 2003, A.G. Op. 03-0498.

§ 47-5-951. Alcohol and drug counseling and treatment.

The correctional facility authorized in Section 47-5-943 shall provide each juvenile offender housed in the facility alcohol and drug counseling and treatment throughout his incarceration.

SOURCES: Laws, 1998, ch. 562, § 5, eff from and after passage (approved April 17, 1998).

§ 47-5-953. Construction of subsequent facilities; locations; requirements and standards.

(1) If a second public or private correctional facility for juvenile offenders is constructed, then the facility shall be located in Kemper County. The facility shall comply with the requirements and standards established in Sections 47-5-943 through 47-5-951.

(2) If a third public or private correctional facility for juveniles is constructed, a site in North Mississippi and a site in South Mississippi shall be considered. If a site is chosen in North Mississippi, then preference shall be given to Quitman County. The facility shall comply with the requirements and standards established in Sections 47-5-943 through 47-5-951.

SOURCES: Laws, 1998, ch. 562, § 6, eff from and after passage (approved April 17, 1998).

INTENSIVE SUPERVISION PROGRAM; ELECTRONIC HOME DETENTION

Sec.
47-5-1001. Definitions [Repealed effective after June 30, 2018].
47-5-1003. Intensive supervision program; eligibility; procedure; time limits; program violations; notice to Department of Corrections; participation in program during term of probation; provision of certain data to Oversight Task Force [Repealed effective after June 30, 2018].
47-5-1005. Rules and guidelines for operation of intensive supervision program; approval and leasing of electronic monitoring devices [Repealed effective after June 30, 2018].
47-5-1007. Payment of monthly fee by participant who is employed; payment of monthly fee by juvenile offender; special fund; responsibilities of participant; notice regarding violation of detention [Repealed effective after June 30, 2018].
47-5-1009. Immunity of department; audit [Repealed effective after June 30, 2018].
47-5-1011. Prior notification of participant and co-residents regarding nature and extent of electronic monitoring devices; damage to equipment; noncriminal environment to be maintained [Repealed effective after June 30, 2018].
47-5-1013. Conditions for participation in intensive supervision program [Repealed effective after June 30, 2018].
47-5-1014. Monthly supervision fee for those participating in program since July 1, 2004 [Repealed effective after June 30, 2018].
47-5-1015. Repeal of §§ 47-5-1001 through 47-5-1015 [Repealed effective after June 30, 2018].

§ 47-5-1001. Definitions [Repealed effective after June 30, 2018].

For purposes of Sections 47-5-1001 through 47-5-1015, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Approved electronic monitoring device" means a device approved by the department which is primarily intended to record and transmit information regarding the offender's presence or nonpresence in the home.

(b) "Correctional field officer" means the supervising probation and parole officer in charge of supervising the offender.

(c) "Court" means a circuit court having jurisdiction to place an offender into the intensive supervision program.

(d) "Department" means the Department of Corrections.

(e) "House arrest" means the confinement of a person convicted or charged with a crime to his place of residence under the terms and conditions established by the department or court.

(f) "Operating capacity" means the total number of state offenders which can be safely and reasonably housed in facilities operated by the department and in local or county jails or other facilities authorized to house state offenders as certified by the department, subject to applicable federal and state laws and rules and regulations.

(g) "Participant" means an offender placed into an intensive supervision program.

SOURCES: Laws, 1993, ch. 576, § 1; Laws, 1994, ch. 606, § 2; reenacted without change, Laws, 1999, ch. 539, § 1; reenacted without change, Laws, 2001, ch. 482, § 2; reenacted without change, Laws, 2003, ch. 418, § 1; reenacted without change, Laws, 2005, ch. 485, § 2; reenacted without change, Laws, 2006, ch. 392, § 1; reenacted without change, Laws, 2008, ch. 479, § 1; reenacted without change, Laws, 2012, ch. 316, § 1; reenacted without change, Laws, 2014, ch. 317, § 1, eff from and after passage (approved Mar. 12, 2014.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (c) by substituting "a court having jurisdiction to place an offender into the intensive" for "a court having jurisdiction to place an offender to the intensive." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — For repeal date of this section, see § 47-5-1015.

Laws of 2005, ch. 485, § 11 provides as follows:

"SECTION 11. The intensive supervision program established in Laws of 2005, Chapter 485 is a continuation of the intensive supervision program that existed on June 30, 2004. All actions taken by the Department of Corrections from July 1, 2004, to April 6, 2005, which would have been authorized under the prior intensive supervision program are ratified, confirmed and validated."

This section was reenacted without change by Laws of 2012, ch. 316, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 47-5-1003. Intensive supervision program; eligibility; procedure; time limits; program violations; notice to Department of Corrections; participation in program during term of probation; provision of certain data to Oversight Task Force [Repealed effective after June 30, 2018].

(1) An intensive supervision program may be used as an alternative to incarceration for offenders who are not convicted of a crime of violence pursuant to Section 97-3-2 as selected by the court and for juvenile offenders as provided in Section 43-21-605. Any offender convicted of a sex crime shall not be placed in the program.

(2) The court may place the defendant on intensive supervision, except when a death sentence or life imprisonment is the maximum penalty which may be imposed by a court or judge.

(3) To protect and to ensure the safety of the state's citizens, any offender who violates an order or condition of the intensive supervision program may be arrested by the correctional field officer and placed in the actual custody of the Department of Corrections. Such offender is under the full and complete jurisdiction of the department and subject to removal from the program by the classification hearing officer.

(4) When any circuit or county court places an offender in an intensive supervision program, the court shall give notice to the Mississippi Department of Corrections within fifteen (15) days of the court's decision to place the offender in an intensive supervision program. Notice shall be delivered to the central office of the Mississippi Department of Corrections and to the regional office of the department which will be providing supervision to the offender in an intensive supervision program.

The courts may not require an offender to participate in the intensive supervision program during a term of probation or post-release supervision.

(5) The Department of Corrections shall provide to the Oversight Task Force all relevant data regarding the offenders participating in the intensive supervision program including the number of offenders admitted to the program annually, the number of offenders who leave the program annually and why they leave, the number of offenders who are arrested or convicted annually and the circumstances of the arrest and any other information requested.

SOURCES: Laws, 1993, ch. 576, § 2; Laws, 1994, ch. 606, § 3; Laws, 1994 Ex Sess, ch. 26, § 26; Laws, 1995, ch. 399, § 1; Laws, 1996, ch. 397, § 2; Laws, 1998, ch. 461, § 1; Laws, 2000, ch. 622, § 1; Laws, 2001, ch. 393, § 10; Laws, 2001, ch. 482, § 1; reenacted without change, Laws, 2003, ch. 418, § 2; reenacted without change, Laws, 2005, ch. 485, § 3; reenacted without change, Laws, 2006, ch. 392, § 2; Laws, 2008, ch. 313, § 1; reenacted, Laws, 2008, ch. 479, § 2; Laws, 2009, ch. 502, § 1; Laws, 2011, ch. 459, § 2; reenacted without change, Laws, 2012, ch. 316, § 2; reenacted without change, Laws, 2014, ch. 317, § 2; Laws, 2014, ch. 457, § 11, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 10 of ch. 393 Laws of 2001, effective from and after July 1, 2001 (approved March 12, 2001), amended this section. Section 1 of ch. 482, Laws of 2001, effective July 1, 2001 (approved March 23, 2001), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the April 26, 2001, meeting of the Committee.

Section 1 of ch. 313, Laws of 2008, effective upon passage (approved March 24, 2008), amended this section. Section 2 of ch. 479, Laws of 2008, effective upon passage (approved April 10, 2008), reenacted the section, as amended by ch. 313, Laws of 2008, without change. As set out above, this section reflects the language of Section 2 of ch. 479, Laws of 2008, which contains language that specifically provides that it supersedes § 47-5-1003 as amended by Laws of 2008, ch. 313.

Section 2 of Chapter 317, Laws of 2014, effective from and after passage (approved March 12, 2014), amended this section. Section 11 of Chapter 457, Laws of 2014, effective from and after July 1, 2014 (approved March 31, 2014), also amended this section. As set out above, this section reflects the language of Section 11 of Chapter 457, Laws of 2014, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Editor's Note — For repeal date of this section, see § 47-5-1015.

Amendment Notes — The first 2014 amendment (ch. 317), reenacted the section without change.

The second 2014 amendment (ch. 457), in (1), substituted "not convicted of a crime of violence pursuant to Section 97-3-2" for "low risk and nonviolent," and deleted "department or" preceding "court and for juvenile offenders"; in (2), deleted "or the department" following "The court" and substituted "by a court of judge" for "or if the defendant has been convicted of a felony committed after having been confined for the conviction of a felony on a previous occasion in any court or courts of the United States and of any state or territories thereof or has been convicted of a felony involving the use of a deadly weapon"; in (5), substituted "provide to the Oversight ... other information requested" for "or if the defendant has been convicted of a felony committed after effectiveness of the intensive supervision program before January 1, 2010."

Cross References — Oversight Task Force, see § 47-5-6.

JUDICIAL DECISIONS

1. In general.
2. Jurisdiction.
3. Post-conviction relief.
4. Removal from house arrest.

1. In general.

Where defendant agreed to plead guilty to a charge of possession of cocaine with intent to distribute in violation of Miss. Code Ann. § 47-5-1003(1) in exchange for the district attorney's recommendation of house arrest but where house arrest was not a permissible punishment for that offense, the district attorney's promise was illusory. Because no valid contract was formed, the agreement was an improper inducement to plead guilty in violation of Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(3), and defendant should have been allowed to withdraw his guilty plea. Littleton v. State, 3 So. 3d 760 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 102 (Miss. 2009).

Defendant's sentence after being convicted of the sale of marijuana within a correctional facility was appropriate because the maximum fine and the minimum sentence that he received were both within the statutory limits of Miss. Code Ann. § 47-5-198(3); it was clear that the circuit court was more than lenient in imposing house arrest against defendant because he benefited through what appeared to have been legislative oversight as well as significant judicial restraint because, if he had been convicted of merely selling controlled substances, he could not have been sentenced to house arrest. Jackson v. State, 962 So. 2d 649 (Miss. Ct. App. 2007), writ of certiorari denied by 962 So. 2d 38, 2007 Miss. LEXIS 434 (Miss. 2007).

Trial court properly did not make a finding that defendant was a violent offender under Miss. Code Ann. § 47-5-1003 when defendant was convicted of driving under the influence under Miss. Code Ann. § 63-11-30(5) because § 47-5-1003 does not require the trial court to make an on the record determination that the accused is a violent offender, and further, aggravated DUI does not fall within either of the excluded categories of § 47-5-1003. Smith v. State, 942 So. 2d 308 (Miss. Ct. App. 2006).

Making the suspension of part of a defendant's sentence contingent upon successful completion of an intensive supervision program is not prohibited by statute. Jenkins v. State, 910 So. 2d 23 (Miss. Ct. App. 2005).

Had the inmate successfully completed the Intensive Supervision Program (ISP), and then been given a suspended sentence, the inmate would have had a right to a hearing prior to the revocation of ISP status, but the inmate did not make it to that point because the inmate failed the urine test four months short of completing the one year in ISP, and there was no denial of due process or equal protection. McBride v. Sparkman, 860 So. 2d 1237 (Miss. Ct. App. 2003).

Pursuant to the statute, a circuit court does not have the authority to disregard a disciplinary committee's finding that a defendant was not guilty of a violation of the program and, then, to reinstate his sentence. Babbitt v. State, 755 So. 2d 406 (Miss. 2000).

2. Jurisdiction.

Because Miss. Code Ann. § 47-5-1003(3) provided that reclassifying an inmate from house arrest was within the Department of Corrections' exclusive jurisdiction, and because an inmate had not exhausted the inmate's administrative remedies in accordance with Miss. Code Ann. §§ 47-5-801, 47-5-803(2), the circuit court lacked jurisdiction to consider the inmate's postconviction motion. Hollingsworth v. State, 66 So. 3d 1254 (Miss. Ct. App. July 19, 2011).

Circuit court conditioned future suspension of fifteen years of the inmate's sentence on her successful completion of the Intensive Supervision Program (ISP); the circuit court's sentence was not prohibited by Miss. Code Ann. § 47-5-1003(4) where suspension of fifteen years of the inmate's sentence was contingent upon her completion of the ISP, and successful completion of post-release supervision was conditioned upon obedience to the terms and conditions of post-release supervision spelled out in her court order, none of which required completion of the ISP; the inmate was not subject to removal from the ISP by the circuit court, but only by the Mississippi Department of Corrections. Ivory v. State, 999 So. 2d 420 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 852, 2009 Miss. LEXIS 51 (Miss. 2009).

The trial court lacked jurisdiction to remove the defendant from an intensive supervision program as the statute vested such jurisdiction in the Department of Corrections. Jensen v. State, 798 So. 2d 383 (Miss. 2001).

Subsection (3) confers full and complete jurisdiction on the Department of Corrections classification committee to remove a prisoner from house arrest and place him into the general prison population to complete his sentence. Smith v. State, 766 So. 2d 50 (Miss. Ct. App. 2000).

3. Post-conviction relief.

Although appellant's sentence was a violation of Miss. Code Ann. § 47-5-1003(1), this did not constitute reversible error; appellant did not suffer any prejudice by the imposition of house arrest and where a defendant is given an illegal sentence that is more favorable than what the legal sentence would have been then he/she is not later entitled to relief through a post-conviction action. Graham v. State, 85 So. 3d 860 (Miss. Ct. App. 2010), opinion withdrawn by, substituted opinion at 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

Inmate's due process rights were not violated in a revocation hearing of his post-release supervision; he signed a waiver to a revocation hearing, admitted to the charges, and consented to immediate revocation of his post-release supervision. The inmate was given notice and an opportunity to be heard and was, therefore, not denied his due process rights. Williams v. State, 4 So. 3d 388 (Miss. Ct. App. 2009).

Circuit court was correct in stating that incarceration in a Mississippi Department of Corrections facility was the only legal sentence available for an inmate after he violated his post-release supervision. His sentence to house arrest was clearly more lenient and favorable than incarceration and was a benefit to the inmate; therefore, such was harmless error, and the inmate was not prejudiced by the sentence and could not now attack its legality or complain of prejudice. Williams v. State, 4 So. 3d 388 (Miss. Ct. App. 2009).

Where appellant entered a guilty plea to possession of cocaine with intent and possession of cocaine, the offenses were not included on the list of offenses not eligible for the intensive supervision and house arrest program under Miss. Code Ann. § 47-5-1003; the trial court's imposition of a 25-year sentence in intensive supervision was not an illegal sentence. Moore v. State, 976 So. 2d 930 (Miss. Ct. App. 2007), writ of certiorari dismissed en banc by 977 So. 2d 343, 2008 Miss. LEXIS 114 (Miss. 2008).

Motion for post-conviction relief was properly dismissed based on an allegation that an illegal sentence of house arrest was imposed under Miss. Code Ann. § 47-5-1003 due to defendant's prior convictions because defendant had benefitted from any error. Jefferson v. State, 958 So. 2d 1276 (Miss. Ct. App. 2007).

Miss. Code Ann. § 47-5-1003 prevented successful completion of house arrest from being made a condition of post-release supervision; if the 2005 sentence did state such a condition, the condition was ineffective, but since the trial judge said on post-conviction relief that there was no such condition, there was also no continuing issue. Burns v. State, 933 So. 2d 329 (Miss. Ct. App. 2006).

Inmate claimed that his probation should not have been revoked as the arrest violated Miss. Code Ann. § 47-5-1003 because the officer who found the drugs did not arrest him. The appellate court affirmed the denial of the inmate's petition because the fact that the officer did not immediately arrest the inmate, but waited for an agent from the Mississippi Bureau of Narcotics to arrive, did not violate § 47-5-1003 because the officer who found the drugs was with the inmate the entire time, and the inmate was arrested the same day. Johnson v. State, 909 So. 2d 122 (Miss. Ct. App. 2005).

Defendant's motion for postconviction relief was properly denied because his sentence was not illegal at the time it was entered and did not become illegal upon the passage of the 2000 amendment to Miss. Code Ann. § 47-5-1003. The revision to § 47-5-1003 relied upon by defendant did not become effective until over a year and a half after his sentencing; while the legislature could have required resentencing under the new provision, it did not do so. McBride v. State, — So. 2d —, 2005 Miss. App. LEXIS 314 (Miss. Ct. App. May 10, 2005), opinion withdrawn by, substituted opinion at 914 So. 2d 260, 2005 Miss. App. LEXIS 524 (Miss. Ct. App. 2005).

Denial of the inmate's petition for post-conviction relief was proper where the revision to Miss. Code Ann. § 47-5-1003 relied upon by him did not become effective until over a year and a half after his sentencing. Thus, his sentence was not illegal at the time it was entered and did not become illegal upon the passage of the revision. McBride v. State, 914 So. 2d 260 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 720 (Miss. 2005).

House arrest is not a form of probationary release and a prisoner under house arrest is confined as a prisoner under the jurisdiction of the Department of Corrections in the normally-understood sense of that term; thus, post-conviction relief is an inappropriate remedy for a prisoner to pursue after he is removed from house arrest and returned to the general prison population. Lewis v. State, 761 So. 2d 922 (Miss. Ct. App. 2000).

4. Removal from house arrest.

Appellant's guilty plea was not rendered ineffective by the trial court failing to explain to her that she could be incarcerated if she did not comply with the conditions of her house arrest as those conditions were imposed by the Mississippi Department of Corrections. Smith v. State, 919 So. 2d 989 (Miss. Ct. App. 2005).

Where the prisoner was removed from house arrest, the circuit court properly denied the prisoner's motion for postconviction relief, because the prisoner had not received a suspended sentence and therefore a hearing prior to revocation was not necessary, and he was entitled to no further procedure as there was a rescission of the possibility of probation caused by his failure in the house arrest program. Moore v. State, 830 So. 2d 1274 (Miss. Ct. App. 2002).

Circuit court properly dismissed defendant's motion for post-conviction relief because the Mississippi Department of Corrections revoked defendant's participation in an in-house arrest program under the provisions of Miss. Code Ann. § 47-5-1003(3), and the circuit court did not amend its original sentencing order. Reeder v. State, 822 So. 2d 1043 (Miss. Ct. App. 2002), writ of certiorari denied by 830 So. 2d 1251, 2002 Miss. App. LEXIS 719 (Miss. Ct. App. 2002).

Department of Corrections had the authority to remove a defendant from an Intensive Supervision Program and place him directly in their custody without a hearing. Perry v. State, 798 So. 2d 643 (Miss. Ct. App. 2001).

There was no violation of the statute where the appellant was removed from the house arrest program and placed into the general prison population to complete his original sentence by the Department of Corrections disciplinary committee since the disciplinary committee is not a separate entity, but is instead a part of the Department of Corrections classification committee. Smith v. State, 766 So. 2d 50 (Miss. Ct. App. 2000).

ATTORNEY GENERAL OPINIONS

The Department of Corrections has authority to place an inmate, without the knowledge or permission of the court, in the Intensive Supervision Program when the court has sentenced the inmate to incarceration and the inmate is serving his court-imposed sentence. Bailey & Roberts, July 23, 1999, A.G. Op. #99-0335.

Although this section is silent as to the length of time an offender may remain on house arrest, he may not be kept on house arrest past the date of the completion of his sentence. Bailey & Roberts, July 23, 1999, A.G. Op. #99-0335.

An offender can be placed on house arrest if he is determined to be "low risk and nonviolent; " an offender may not be placed on house arrest if he has been convicted of a sex crime, a felony for the sale or manufacture of a controlled substance or a felony involving the use of a deadly weapon, or if he has received a death sentence or been convicted of a crime for which life imprisonment is the maximum penalty, or if he has previously been confined for the conviction of a felony in any court or courts of the United States or of any state or territories thereof. Bailey & Roberts, July 23, 1999, A.G. Op. #99-0335.

Once an offender is picked up and returned to the actual custody of the Department of Corrections for violating the conditions of house arrest, the decision whether to remove him from the program is left to the classification committee; there is nothing in this section forbidding the classification committee from setting conditions that would allow the offender to return to house arrest. Bailey & Roberts, July 23, 1999, A.G. Op. #99-0335.

An offender in the intensive supervision program is to be considered an inmate and not a probationer or parolee and, therefore, the assumption is that the time served on house arrest is applied as time served on the offender's sentence, even if he violates house arrest before serving the complete sentence; thus, an offender whose house arrest is revoked after successfully serving 11 months of a 12 month sentence would only have one month left to serve in the actual custody of the department. Bailey & Roberts, July 23, 1999, A.G. Op. #99-0335.

Among offenders convicted under the Uniform Controlled Substances Law, only those persons convicted specifically of the sale or manufacture of a controlled substance are excluded from being placed in an intensive supervision program. Johnson, Oct. 20, 2000, A.G. Op. #2000-0629.

The amendment to subsection (1), denying certain offenders eligibility for the Intensive Supervision Program has no effect on the length of incarceration and consequently does not violate the ex post facto clause when applied to those convicted prior to its passage. Eads, Nov. 16, 2001, A.G. Op. #01-0673.

A circuit judge does not have the jurisdiction to modify a sentence of a defendant placed on house arrest after the expiration of the sentencing term. Cotten, Jan. 23, 2004, A.G. Op. 03-0692.

§ 47-5-1005. Rules and guidelines for operation of intensive supervision program; approval and leasing of electronic monitoring devices [Repealed effective after June 30, 2018].

(1) The department shall promulgate rules that prescribe reasonable guidelines under which an intensive supervision program shall operate. These rules shall include, but not be limited to, the following:

(a) The participant shall remain within the interior premises or within the property boundaries of his or her residence at all times during the hours designated by the correctional field officer.

(b) Approved absences from the home may include, but are not limited to, the following:

(i) Working or employment approved by the court or department and traveling to or from approved employment;

(ii) Unemployed and seeking employment approved for the participant by the court or department;

(iii) Undergoing medical, psychiatric, mental health treatment, counseling or other treatment programs approved for the participant by the court or department;

(iv) Attending an educational institution or a program approved for the participant by the court or department;

(v) Participating in community work release or a community service program approved for the participant by the court or department; or

(vi) For another compelling reason consistent with the public interest, as approved by the court or department.

(c) Except in case of a medical emergency and approval by the Commissioner of the Department of Corrections, or his designee, or by circuit court order for medical purposes, no participant in the intensive supervision program may leave the jurisdiction of the State of Mississippi.

(2) The department shall select and approve all electronic monitoring devices used under Sections 47-5-1001 through 47-5-1015.

(3) The department may lease the equipment necessary to implement the intensive supervision program and to contract for the monitoring of such devices. The department is authorized to select the lowest price and best source in contracting for these services.

SOURCES: Laws, 1993, ch. 576, § 3; Laws, 2007, ch. 598, § 1; reenacted without change, Laws, 2008, ch. 479, § 3; reenacted without change, Laws, 2012, ch. 316, § 3; reenacted without change, Laws, 2014, ch. 317, § 3, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-1015.

This section was reenacted without change by Laws of 2014, ch. 317, § 3, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 47-5-1007. Payment of monthly fee by participant who is employed; payment of monthly fee by juvenile offender; special fund; responsibilities of participant; notice regarding violation of detention [Repealed effective after June 30, 2018].

(1) Any participant in the intensive supervision program who engages in employment shall pay a monthly fee to the department for each month such person is enrolled in the program. The department may waive the monthly fee if the offender is a full-time student or is engaged in vocational training. Juvenile offenders shall pay a monthly fee of not less than Ten Dollars ($10.00) but not more than Fifty Dollars ($50.00) based on a sliding scale using the standard of need for each family that is used to calculate TANF benefits. Money received by the department from participants in the program shall be deposited into a special fund which is hereby created in the State Treasury. It shall be used, upon appropriation by the Legislature, for the purpose of helping to defray the costs involved in administering and supervising such program. Unexpended amounts remaining in such special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in such special fund shall be deposited to the credit of the special fund.

(2) The participant shall admit any correctional officer into his residence at any time for purposes of verifying the participant's compliance with the conditions of his detention.

(3) The participant shall make the necessary arrangements to allow for correctional officers to visit the participant's place of education or employment at any time, based upon the approval of the educational institution or employer, for the purpose of verifying the participant's compliance with the conditions of his detention.

(4) The participant shall acknowledge and participate with the approved electronic monitoring device as designated by the department at any time for the purpose of verifying the participant's compliance with the conditions of his detention.

(5) The participant shall be responsible for and shall maintain the following:

(a) A working telephone line in the participant's home;

(b) A monitoring device in the participant's home, or on the participant's person, or both; and

(c) A monitoring device in the participant's home and on the participant's person in the absence of a telephone.

(6) The participant shall obtain approval from the correctional field officer before the participant changes residence.

(7) The participant shall not commit another crime during the period of home detention ordered by the court or department.

(8) Notice shall be given to the participant that violation of the order of home detention shall subject the participant to prosecution for the crime of escape as a felony.

(9) The participant shall abide by other conditions as set by the court or the department.

SOURCES: Laws, 1993, ch. 576, § 4; reenacted without change, Laws, 1999, ch. 539, § 4; reenacted without change, Laws, 2001, ch. 482, § 4; reenacted without change, Laws, 2003, ch. 418, § 4; reenacted without change, Laws, 2005, ch. 485, § 5; reenacted without change, Laws, 2006, ch. 392, § 4; reenacted and amended, Laws, 2008, ch. 479, § 4; Laws, 2011, ch. 459, § 3; reenacted without change, Laws, 2012, ch. 316, § 4; reenacted without change, Laws, 2014, ch. 317, § 4; Laws, 2014, ch. 457, § 12, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 4 of Chapter 317, Laws of 2014, effective from and after passage (approved March 12, 2014), reenacted this section without change. Section 12 of Chapter 457, Laws of 2014, effective from and after July 1, 2014 (approved March 31, 2014), amended this section. As set out above, this section reflects the language of Section 12 of Chapter 457, Laws of 2014, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Editor's Note — For repeal date of this section, see § 47-5-1015.

Amendment Notes — The first 2014 amendment (ch. 317), reenacted the section without change.

The second 2014 amendment (ch. 457), inserted "court or the" near the end of (9).

§ 47-5-1009. Immunity of department; audit [Repealed effective after June 30, 2018].

(1) The department shall have absolute immunity from liability for any injury resulting from a determination by a judge or correctional officer that an offender shall be allowed to participate in the electronic home detention program.

(2) The Department of Audit shall annually audit the records of the department to ensure compliance with Sections 47-5-1001 through 47-5-1015.

SOURCES: Laws, 1993, ch. 576, § 5; reenacted without change, Laws, 1999, ch. 539, § 5; reenacted without change, Laws, 2001, ch. 482, § 5; reenacted without change, Laws, 2003, ch. 418, § 5; reenacted without change, Laws, 2005, ch. 485, § 6; reenacted without change, Laws, 2006, ch. 392, § 5; reenacted without change, Laws, 2008, ch. 479, § 5; reenacted without change, Laws, 2012, ch. 316, § 5; reenacted without change, Laws, 2014, ch. 317, § 5, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-1015.

Amendment Notes — The 2014 amendment reenacted without change.

§ 47-5-1011. Prior notification of participant and co-residents regarding nature and extent of electronic monitoring devices; damage to equipment; noncriminal environment to be maintained [Repealed effective after June 30, 2018].

(1) Before entering an order for commitment for electronic house arrest, the department shall inform the participant and other persons residing in the home of the nature and extent of the approved electronic monitoring devices by doing the following:

(a) Securing the written consent of the participant in the program to comply with the rules and regulations of the program.

(b) Advising adult persons residing in the home of the participant at the time an order or commitment for electronic house arrest is entered and asking such persons to acknowledge the nature and extent of approved electronic monitoring devices.

(c) Insuring that the approved electronic devices are minimally intrusive upon the privacy of other persons residing in the home while remaining in compliance with Sections 47-5-1001 through 47-5-1015.

(2) The participant shall be responsible for the cost of equipment and any damage to such equipment. Any intentional damage, any attempt to defeat monitoring, any committing of a criminal offense or any associating with felons or known criminals, shall constitute a violation of the program.

(3) Any person whose residence is utilized in the program shall agree to keep the home drug and alcohol free and to exclude known felons and criminals in order to provide a noncriminal environment.

SOURCES: Laws, 1993, ch. 576, § 6; Laws, 1994, ch. 606, § 4; reenacted without change, Laws, 1999, ch. 539, § 6; reenacted without change, Laws, 2001, ch. 482, § 6; reenacted without change, Laws, 2003, ch. 418, § 6; reenacted without change, Laws, 2005, ch. 485, § 7; reenacted without change, Laws, 2006, ch. 392, § 6; reenacted without change, Laws, 2008, ch. 479, § 6; reenacted without change, Laws, 2012, ch. 316, § 6; reenacted without change, Laws, 2014, ch. 317, § 6, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-1015.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 47-5-1013. Conditions for participation in intensive supervision program [Repealed effective after June 30, 2018].

Participants enrolled in an intensive supervision program shall be required to:

(a) Maintain employment if physically able, or full-time student status at an approved school or vocational trade, and make progress deemed satisfactory to the correctional field officer, or both, or be involved in supervised job searches.

(b) Pay restitution and program fees as directed by the department. Program fees shall not be less than Eighty-eight Dollars ($88.00) per month. The sentencing judge may charge a program fee of less than Eighty-eight Dollars ($88.00) per month in cases of extreme financial hardship, when such judge determines that the offender's participation in the program would provide a benefit to his community. Juvenile offenders shall not pay a program fee but shall pay a monthly fee as provided in Section 47-5-1007. Program fees shall be deposited in the special fund created in Section 47-5-1007.

(c) Establish a place of residence at a place approved by the correctional field officer, and not change his residence without the officer's approval. The correctional officer shall be allowed to inspect the place of residence for alcoholic beverages, controlled substances and drug paraphernalia.

(d) Remain at his place of residence at all times except to go to work, to attend school, to perform community service and as specifically allowed in each instance by the correctional field officer.

(e) Allow administration of drug and alcohol tests as requested by the field officer.

(f) Perform not less than ten (10) hours of community service each month.

(g) Meet any other conditions imposed by the court to meet the needs of the offender and limit the risks to the community.

SOURCES: Laws, 1993, ch. 576, § 7; reenacted without change, Laws, 1999, ch. 539, § 7; reenacted without change, Laws, 2001, ch. 482, § 7; reenacted without change, Laws, 2003, ch. 418, § 7; reenacted and amended, Laws, 2005, ch. 485, § 8; reenacted without change, Laws, 2006, ch. 392, § 7; reenacted and amended, Laws, 2008, ch. 479, § 7; Laws, 2010, ch. 492, § 1; Laws, 2011, ch. 459, § 4; reenacted without change, Laws, 2012, ch. 316, § 7; reenacted without change, Laws, 2014, ch. 317, § 7, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal date of this section, see § 47-5-1015.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 47-5-1014. Monthly supervision fee for those participating in program since July 1, 2004 [Repealed effective after June 30, 2018].

(1) Participants who have been in the intensive supervision program since July 1, 2004, whether placed into the program before or after July 1, 2004, shall pay a Fifty Dollar ($50.00) monthly supervision fee to the Mississippi Department of Corrections for their supervision from July 1, 2004, or from the date the participant entered the program after July 1, 2004, until completion of the program, or April 6, 2005, or whichever occurs first. From and after April 6, 2005, all participants of the intensive supervision program shall pay the fee as established in Section 47-5-1013.

(2) The Department of Corrections shall use its best effort to collect the monthly supervision fees in arrearage under this section.

(3) A participant's failure to pay the monthly fees in arrearage shall not be deemed a violation of a condition of the program, and the participant shall not be removed from the program for failure to pay the monthly fees in arrearage.

(4) This section shall not apply to any fees incurred after April 6, 2005.

(5) Any arrearage remaining under this section at the end of the offender's participation in the program shall automatically be reduced to a civil judgment and upon notice by the Department of Corrections shall be recorded with the circuit court clerk in the county wherein the participant resides. The Department of Corrections and/or the district attorney shall use best efforts to collect the judgment.

SOURCES: Laws, 2005, ch. 485, § 10; reenacted without change, Laws, 2008, ch. 479, § 8; reenacted without change, Laws, 2012, ch. 316, § 8; reenacted without change, Laws, 2014, ch. 317, § 8, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — For repeal of this section, see § 47-5-1015.

Laws of 2005, ch. 485, § 11, provides as follows:

"SECTION 11. The intensive supervision program established in this act is a continuation of the intensive supervision program that existed on June 30, 2004. All actions taken by the Department of Corrections from July 1, 2004, to April 6, 2005, which would have been authorized under the prior intensive supervision program are ratified, confirmed and validated."

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 47-5-1015. Repeal of §§ 47-5-1001 through 47-5-1015 [Repealed effective after June 30, 2018].

Sections 47-5-1001 through 47-5-1015 shall stand repealed after June 30, 2018.

SOURCES: Laws, 1993, ch. 576, § 8; Laws, 1995, ch. 399, § 2; Laws, 1999, ch. 539, § 8; Laws, 2001, ch. 482, § 8; reenacted and amended, Laws, 2003, ch. 418, § 8; reenacted and amended, Laws, 2005, ch. 485, § 9; Laws, 2006, ch. 392, § 8; Laws, 2008, ch. 479, § 9; reenacted and amended, Laws, 2012, ch. 316, § 9; reenacted and amended, Laws, 2014, ch. 317, § 9, eff from and after passage (approved Mar. 12, 2014.)

Amendment Notes — The 2014 amendment extended the repealer provision from "June 30, 2014" to "June 30, 2018."

SPECIAL NEEDS PRISON PROGRAM OF 1994

SEC.
47-5-1101. Short title.
47-5-1103. Definitions.
47-5-1105. Contracts for special needs facilities and services; eligibility of inmate for special needs facility; rates and benefits standards.

47-5-1107. Standards for design, construction, maintenance, and operation of facilities.
47-5-1109. Term limits on contracts for operation and construction of facilities.
47-5-1111. Private "correctional officers" of contractors; use of force and firearms restricted; training.
47-5-1113. Employee training.
47-5-1115. Prerequisites for contracting for correctional services.
47-5-1117. Plan for resumption of state control of facility upon termination of contract.
47-5-1119. Monitoring of contracts and facilities by commissioner and medical director.
47-5-1121. Nondelegable responsibilities.
47-5-1123. Repealed.

§ 47-5-1101. Short title.

Sections 47-5-1101 through 47-5-1123 shall be cited as the "Special Needs Prison Program of 1994."

SOURCES: Laws, 1994, ch. 450, § 1; reenacted without change, Laws, 1999, ch. 540, § 1; reenacted without change, Laws, 2001, ch. 480, § 1; reenacted without change, Laws, 2002, ch. 617, § 1; reenacted without change, Laws, 2003, ch. 372, § 1; reenacted without change, Laws, 2004, ch. 471, § 1; reenacted without change, Laws, 2006, ch. 385, § 1, eff from and after July 1, 2006.

Editor's Note — Section 47-5-1123, which provided for the repeal of §§ 47-5-1101 through 47-5-1121 and is referred to in this section, was repealed by § 1 of Chapter 582, Laws of 2006, effective from and after July 2, 2006.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 11.

§ 47-5-1103. Definitions.

As used in Sections 47-5-1101 through 47-5-1123, unless the context otherwise requires:

(a) "Commissioner" means the Commissioner of Corrections.

(b) "Contractor" means any private entity entering into a contractual agreement with the commissioner to provide special needs facilities or correctional services to inmates under the custody of the department.

(c) "Department" means the Department of Corrections.

(d) "Special needs" means an inmate with diminished mental or physical health requiring specialized health care facilities or services. This does not include HIV positive inmates.

SOURCES: Laws, 1994, ch. 450, § 2; reenacted without change, Laws, 1999, ch. 540, § 2; reenacted without change, Laws, 2001, ch. 480, § 2; reenacted without change, Laws, 2002, ch. 617, § 2; reenacted without change, Laws, 2003, ch. 372, § 2; reenacted without change, Laws, 2004, ch. 471, § 2;

reenacted without change, Laws, 2006, ch. 385, § 2, eff from and after July 1, 2006.

Editor's Note — Section 47-5-1123, which provided for the repeal of §§ 47-5-1101 through 47-5-1121 and is referred to in this section, was repealed by § 1 of Chapter 582, Laws of 2006, effective from and after July 2, 2006.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-5-1105. Contracts for special needs facilities and services; eligibility of inmate for special needs facility; rates and benefits standards.

(1) The commissioner is authorized to enter into contracts for a special needs correctional facility and services only as provided in Sections 47-5-1101 through 47-5-1123.

(2) No contract shall be entered into unless it offers cost savings of at least ten percent (10%) to the department.

(3) Any inmate sentenced to the custody of the department identified as having a special need may be eligible to be incarcerated in a special needs correctional facility in which a contractor is providing correctional services.

(4) The rates and benefits for correctional services shall be negotiated by the commissioner based upon American Correction Association Standards, state law and court orders.

(5) The special needs facility or the site for a proposed facility must comply with all local zoning ordinances and regulations.

(6) The department may contract for the construction or leasing of a special needs facility. Any facility operated by a private contractor must house medium or maximum security inmates.

SOURCES: Laws, 1994, ch. 450, § 3; reenacted without change, Laws, 1999, ch. 540, § 3; reenacted without change, Laws, 2001, ch. 480, § 3; reenacted without change, Laws, 2002, ch. 617, § 3; reenacted without change, Laws, 2003, ch. 372, § 3; reenacted without change, Laws, 2004, ch. 471, § 3; reenacted without change, Laws, 2006, ch. 385, § 3, eff from and after July 1, 2006.

Editor's Note — Section 47-5-1123, which provided for the repeal of §§ 47-5-1101 through 47-5-1121 and is referred to in this section, was repealed by § 1 of Chapter 582, Laws of 2006, effective from and after July 2, 2006.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-5-1107. Standards for design, construction, maintenance, and operation of facilities.

All facilities that are governed by this chapter shall be designed, constructed, and at all times maintained and operated in accordance with the American Correctional Association Standards in force at the time of contracting, as well as with subsequent ACA Standards to the extent that they are approved by the contracting agency. The facility shall meet the percentage of standards required for accreditation by the American Correctional Association.

In addition, all facilities shall at all times comply with all federal and state constitutional standards, federal, state and local laws, and all court orders.

SOURCES: Laws, 1994, ch. 450, § 4; reenacted without change, Laws, 1999, ch. 540, § 4; reenacted without change, Laws, 2001, ch. 480, § 4; reenacted without change, Laws, 2002, ch. 617, § 4; reenacted without change, Laws, 2003, ch. 372, § 4; reenacted without change, Laws, 2004, ch. 471, § 4; reenacted without change, Laws, 2006, ch. 385, § 4, eff from and after July 1, 2006.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-5-1109. Term limits on contracts for operation and construction of facilities.

The initial contract for the operation of a facility or for incarceration of prisoners or inmates therein shall be for a period of not more than five (5) years with an option to renew for an additional period of two (2) years. Contracts for construction, purchase, or lease of a facility shall not exceed a term of fifteen (15) years. Any contract for housing beyond the initial five (5) years shall be subject to annual appropriation by the Legislature if public funds are used to finance the construction.

SOURCES: Laws, 1994, ch. 450, § 5; reenacted without change, Laws, 1999, ch. 540, § 5; reenacted without change, Laws, 2001, ch. 480, § 5; reenacted without change, Laws, 2002, ch. 617, § 5; reenacted without change, Laws, 2003, ch. 372, § 5; reenacted without change, Laws, 2004, ch. 471, § 5; reenacted without change, Laws, 2006, ch. 385, § 5, eff from and after July 1, 2006.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-5-1111. Private "correctional officers" of contractors; use of force and firearms restricted; training.

(1) A contractor's employees serving as "correctional officers" shall be allowed to use force only while on the grounds of a facility, while transporting inmates, and while pursuing escapees from a facility.

(2) A contractor shall be authorized to use only such nondeadly force as the circumstances require in the following situations: to prevent the commission of a felony or misdemeanor, including escape; to defend oneself or others against physical assault; to prevent serious damage to property; to enforce institutional regulations and orders; and to prevent or quell a riot.

(3) A contractor's employees, while performing their officially assigned duties relating to the custody, control, transportation, recapture or arrest of any escaped offender assigned to a contract prison, shall be authorized to use force and firearms as necessary to pursue and recapture escapees.

(4) Private correctional officers who have been appropriately certified as determined by the contracting agency and trained pursuant to the provisions of subsection (5) shall have the right to carry and use firearms and shall exercise such authority and use deadly force only as a last resort, and then only to prevent an act that could result in death or serious bodily injury to oneself or to another person.

(5) Private correctional officers shall be trained in the use of force and the use of firearms, in accordance with ACA Standards and shall be trained, at the contractor's expense, for at least the minimum number of hours that public personnel are currently trained.

SOURCES: Laws, 1994, ch. 450, § 6; Laws, 1998, ch. 581, § 1; Laws, 2001, ch. 480, § 6; reenacted without change, Laws, 2002, ch. 617, § 6; reenacted without change, Laws, 2003, ch. 372, § 6; reenacted without change, Laws, 2004, ch. 471, § 6; reenacted without change, Laws, 2006, ch. 385, § 6, eff from and after July 1, 2006.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-5-1113. Employee training.

All employees of a facility operated pursuant to Sections 47-5-1101 through 47-5-1123 must receive, at a minimum, the same quality and quantity of training as that required by the state, for employees of public correctional and detention facilities. All training expenses shall be the responsibility of the contractor.

SOURCES: Laws, 1994, ch. 450, § 7; reenacted without change, Laws, 1999, ch. 540, § 7; reenacted without change, Laws, 2001, ch. 480, § 7; reenacted without change, Laws, 2002, ch. 617, § 7; reenacted without change, Laws, 2003, ch. 372, § 7; reenacted without change, Laws, 2004, ch. 471, § 7;

reenacted without change, Laws, 2006, ch. 385, § 7, eff from and after July 1, 2006.

Editor's Note — Section 47-5-1123, which provided for the repeal of §§ 47-5-1101 through 47-5-1121 and is referred to in this section, was repealed by § 1 of Chapter 582, Laws of 2006, effective from and after July 2, 2006.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-5-1115. Prerequisites for contracting for correctional services.

A contract for correctional services shall not be entered into unless the following requirements are met:

(a) The contractor provides an adequate plan of insurance, specifically including insurance for civil rights claims, as determined by an independent risk management/actuarial firm with demonstrated experience in public liability for state governments. In determining the adequacy of the plan, such firm shall determine whether:

(i) The insurance is adequate to protect the state from any and all actions by a third party against the contractor or the state as a result of the contract;

(ii) The insurance is adequate to protect the state against any and all claims arising as a result of any occurrence during the term of the contract; that is, the insurance is adequate on an occurrence basis, not on a claims-made basis;

(iii) The insurance is adequate to assure the contractor's ability to fulfill its contract with the state in all respects, and to assure that the contractor is not limited in this ability because of financial liability which results from judgments; and

(iv) The insurance is adequate to satisfy such other requirements specified by the independent risk management/actuarial firm.

(b) The sovereign immunity of the state shall not apply to the contractor. Neither the contractor nor the insurer of the contractor may plead the defense of sovereign immunity in any action arising out of the performance of the contract.

SOURCES: Laws, 1994, ch. 450, § 8; reenacted without change, Laws, 1999, ch. 540, § 8; reenacted without change, Laws, 2001, ch. 480, § 8; reenacted without change, Laws, 2002, ch. 617, § 8; reenacted without change, Laws, 2003, ch. 372, § 8; reenacted without change, Laws, 2004, ch. 471, § 8; reenacted without change, Laws, 2006, ch. 385, § 8, eff from and after July 1, 2006.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-5-1117. Plan for resumption of state control of facility upon termination of contract.

A plan shall be developed and certified by the commissioner which demonstrates the method by which the state would resume control of the prison upon contract termination. Such plan shall be submitted for review and comment to law enforcement agencies, the district attorney and circuit judges in the county in which the prison is located.

SOURCES: Laws, 1994, ch. 450, § 9; reenacted without change, Laws, 1999, ch. 540, § 9; reenacted without change, Laws, 2001, ch. 480, § 9; reenacted without change, Laws, 2002, ch. 617, § 9; reenacted without change, Laws, 2003, ch. 372, § 9; reenacted without change, Laws, 2004, ch. 471, § 9; reenacted without change, Laws, 2006, ch. 385, § 9, eff from and after July 1, 2006.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-5-1119. Monitoring of contracts and facilities by commissioner and medical director.

(1) The commissioner shall monitor any contracts with prison contractors providing correctional services and shall report at least annually, or as requested, to the Senate Committee on Corrections and the House Penitentiary Committee on the performance of the contractor.

(2) The medical director of the department shall be responsible for monitoring all aspects of the facility. The medical director may designate a person to assist in monitoring at the facility, as the medical director determines to be necessary. The medical director shall be provided an on-site work area, shall be on-site on a daily basis, and shall have access to all areas of the facility and to inmates and staff at all times. The contractor shall provide any and all data, reports and other materials that the medical director determines are necessary to carry out monitoring responsibilities under this section.

SOURCES: Laws, 1994, ch. 450, § 10; reenacted without change, Laws, 1999, ch. 540, § 10; reenacted without change, Laws, 2001, ch. 480, § 10; reenacted without change, Laws, 2002, ch. 617, § 10; reenacted without change, Laws, 2003, ch. 372, § 10; reenacted without change, Laws, 2004, ch. 471, § 10; reenacted without change, Laws, 2006, ch. 385, § 10, eff from and after July 1, 2006.

§ 47-5-1121. Nondelegable responsibilities.

No contract for private correctional facilities or services shall authorize, allow, or imply a delegation of the authority or responsibility of the state to a prison contractor to:

(a) Classify inmates or place inmates in less restrictive custody or more restrictive custody;

(b) Transfer an inmate, although the contractor may recommend in writing that the department transfer a particular inmate;

(c) Grant, deny, or revoke sentence credits;

(d) Recommend that the parole board either deny or grant parole, although the contractor may submit written reports that have been prepared in the ordinary course of business;

(e) Develop and implement procedures for calculating sentence credits or inmate release and parole eligibility dates;

(f) Require an inmate to work, except on department-approved projects; approve the type of work that inmates may perform; or award or withhold wages or sentence credits based on the manner in which individual inmates perform such work; or

(g) Determine inmate eligibility for furlough and work release.

SOURCES: Laws, 1994, ch. 450, § 11; reenacted without change, Laws, 1999, ch. 540, § 11; reenacted without change, Laws, 2001, ch. 480, § 11; reenacted without change, Laws, 2002, ch. 617, § 11; reenacted without change, Laws, 2003, ch. 372, § 11; reenacted without change, Laws, 2004, ch. 471, § 11; reenacted without change, Laws, 2006, ch. 385, § 11, eff from and after July 1, 2006.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 7.

§ 47-5-1123. Repealed.

Repealed by Laws, 2006, ch. 582, § 1 effective from and after July 2, 2006.

§ 47-5-1123. [Laws, 1994, ch. 450, § 12; Laws, 1999, ch. 540, § 12; Laws, 2001, ch. 397, § 1; Laws, 2001, ch. 480, § 12; Laws, 2002, ch. 617, § 12; Laws, 2003, ch. 372; Laws, 2004, ch. 471, § 12, eff from and after July 1, 2004].

Editor's Note — Former § 47-5-1123 was entitled: "Repeal of Sections 47-5-1101 through 47-5-1121."

Laws of 2006, ch. 582, § 2 provides as follows:

"SECTION 2. It is the intent of the Legislature that the repeal of Section 47-5-1123, Mississippi Code of 1972, contained in this Senate Bill No. 2585, 2006 Regular Session [Chapter 582], shall supersede the amendment to this section contained in House Bill No. 552, 2006 Regular Session [§ 12, ch. 385, Laws of 2006]."

STATE PRISON EMERGENCY CONSTRUCTION AND MANAGEMENT BOARD

Sec.

47-5-1201. Legislative intent and purpose.

47-5-1203. Repealed.

47-5-1205. Board to provide for construction and equipping of additional housing and support facilities.

47-5-1207. Board to select suitable sites for various public and private facilities.

47-5-1209. Noxubee County Prison Work Program.

47-5-1211. Contracts for private correctional facilities or services; experience of contractor; rates and benefits standards.

47-5-1213. Term limits on contracts for operation and construction of facilities; conveyance of facilities to state.

47-5-1215. Private "correctional officers" of contractors; use of force and firearms restricted; training.

47-5-1217. Employee training.

47-5-1219. Prerequisites for contracting for correctional services; defense of suits or claims.

47-5-1221. Plan for resumption of state control of facility upon termination of contract.

47-5-1223. Contract compliance officer; reimbursement of contract compliance officer's salary and expenses by private entity.

47-5-1225. Nondelegable responsibilities.

47-5-1227. Restrictions on employment of public officials and employees by private entities.

47-5-1229. Correctional Facilities Emergency Construction Fund.

§ 47-5-1201. Legislative intent and purpose.

The purpose of this legislation is to alleviate the immediate and the projected operating capacity needs of the state correctional system by providing for the immediate and long-term addition of correctional facilities. It is the intent of the Legislature that agencies expedite the procurement of facilities to alleviate the short-term emergency capacity needs of the correctional system.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 1, eff from and after passage (approved August 23, 1994).

§ 47-5-1203. Repealed.

Repealed by Laws, 1994, 1st Ex. Sess., ch. 26, § 2, eff from and after July 1, 1996.

[Laws, 1994, 1st Ex. Sess., ch. 26, § 2]

Editor's Note — Former § 47-5-1203 related to the State Prison Emergency Construction and Management Board.

This section, as enacted by Laws, 1994, 1st Ex. Sess., ch. 26, § 2, contained a self-executing repealer, effective from and after July 1, 1996.

§ 47-5-1205. Board to provide for construction and equipping of additional housing and support facilities.

(1) The State Prison Emergency Construction and Management Board shall provide for the construction and shall equip additional housing and necessary support facilities for one thousand two hundred sixteen (1,216) medium security male offenders and for two hundred (200) male offenders sentenced to evidence-based programs for the benefit of inmates at the South Mississippi Correctional Institution. The department may house offenders not sentenced to such programs in the two hundred (200) beds reserved for the program as it deems appropriate.

(2) The State Prison Emergency Construction and Management Board shall provide for the construction and shall equip additional housing and support facilities for seven hundred (700) medium security male offenders at the Central Mississippi Correctional Facility.

(3) The State Prison Emergency Construction and Management Board shall use funds from the "Corrections Facilities Emergency Construction Fund."

(4) The Department of Finance and Administration shall use its emergency powers to expedite the construction of these facilities. In the planning, design, procurement and construction of these facilities, the board shall make maximum utilization of plans, specifications and processes used in, completed or on-going construction projects for the Mississippi Department of Corrections.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 3; Laws, 2007, ch. 474, § 1; Laws, 2015, ch. 463, § 5, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment, in (1), substituted "evidence-based programs for the benefit of inmates" for "the Regimented Inmate Discipline Program" in the next-to-last sentence, and substituted "such programs" for "Regimented Inmate Discipline Program" in the last sentence.

§ 47-5-1207. Board to select suitable sites for various public and private facilities.

(1) The State Prison Emergency Construction and Management Board shall select a suitable site or sites for a public or private facility not to exceed one thousand (1,000) beds in any of the following counties: Lauderdale, Quitman, Perry and Sharkey.

(2) The State Prison Emergency Construction and Management Board may contract for the construction, lease, acquisition, improvement, operation and management of a private correctional facility in Marshall County or Wilkinson County for the private incarceration of not more than one thousand (1,000) state inmates at the facility.

(3) The State Prison Emergency Construction and Management Board may contract with any county industrial or economic development authority or district for the construction, lease, acquisition, improvement, operation and

management of a private correctional facility to be sited or constructed under Chapter 26, Laws of 1994 First Extraordinary Session.

(4) The State Prison Emergency Construction and Management Board may contract for the construction, lease, acquisition, improvement and operation of two (2) private restitution centers, one of which may be in Bolivar County. The capacity of each restitution center shall not exceed seventy-five (75) state inmates.

(5)(a) The State Prison Emergency Construction and Management Board may contract for the special needs facility and services authorized in Sections 47-5-1101 through 47-5-1123.

(b) No later than September 15, 1994, the Joint Legislative Committee on Performance Evaluation and Expenditure Review shall determine the state medical cost per inmate day to use as a basis for measuring the validity of ten percent (10%) savings of the contractor cost.

(6) Each private contractor and private facility housing state inmates must meet the requirements of Section 47-5-1211 through Section 47-5-1227.

(7) No additional emergency prisons shall be located in any city and/or county, except upon the submission to the State Prison Emergency Construction and Management Board, of a resolution signed by a majority of the governing authorities of the city and/or county, wherein the proposed prison site is to be located, approving and/or requesting that a prison facility be located at the proposed site.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 4, eff from and after passage (approved August 23, 1994).

Editor's Note — Section 47-5-1123, referred to in (5)(a), was repealed by Laws of 2006, ch. 582, § 1, effective from and after July 2, 2006.

ATTORNEY GENERAL OPINIONS

An economic development district, not being an economic development authority, is subject to the purchase laws of the State of Mississippi; trustees of a development district control funds collected for support of the district and may upon a majority vote approve properly submitted bills for payment; funds must be placed in the county depository at which the development district may have its own separate account; and there is no authority for a development district to provide meals for its appointed trustees at their meetings. Munn, January 9, 1998, A.G. Op. #97-0816.

§ 47-5-1209. Noxubee County Prison Work Program.

(1) There is created the Noxubee County Prison Work Program, to be located at the Industrial Park in Macon, Mississippi. The Noxubee County Prison Work Program shall be established pursuant to the authority granted in Sections 47-5-451 through 47-5-469 that provide for the joint state-county work programs, in order to achieve the legislative intent as set out in Section 47-5-351, making maximum utilization of the farmlands for the purpose of feeding offenders.

(2) The State Prison Emergency Construction and Management Board, subject to such funding as the Legislature may make available, may modify any existing facility or construct and equip one (1) seventy-five-bed correctional work camp in accordance with Section 47-5-455, on the site of the Industrial Park in Macon, Mississippi. The purpose of constructing this work camp is to provide housing and necessary support in order that the offenders may be available to work for the municipalities and counties in the surrounding areas in addition to working at the Industrial Park.

(3) In the construction and renovation of a work camp, the State Prison Emergency Construction and Management Board, in conjunction with the Mississippi Department of Corrections, shall utilize offenders in the custody of the Department of Corrections for construction to the extent such labor is available. The Mississippi Department of Corrections shall: establish, maintain and implement a program for training and utilizing offenders in construction projects; determine and provide to the State Prison Emergency Construction and Management Board the name, the number and construction skills of offenders; and provide security officers to be in attendance during all hours when offenders are involved in construction. When necessary construction skills are not available from the offender population, the State Prison Emergency Construction and Management Board may contract with private contractors or mechanics to perform necessary construction work.

(4) In the planning, design, procurement and construction of a work camp, the State Prison Emergency Construction and Management Board shall make maximum utilization of plans and specifications prepared for, and processes employed in, completed or ongoing construction projects for the Mississippi Department of Corrections.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 6, eff from and after passage (approved August 23, 1994).

§ 47-5-1211. Contracts for private correctional facilities or services; experience of contractor; rates and benefits standards.

(1) A contract for private correctional facilities or services shall not be entered into unless the contractor has demonstrated that it has:

(a) The qualifications, experience and management personnel necessary to carry out the terms of the contract.

(b) The ability to expedite the siting, design and construction of correctional facilities.

(c) The ability to comply with applicable laws, court orders and national correctional standards.

(d) Demonstrated history of successful operation and management of other correctional facilities.

(2) A facility shall at all times comply with all federal and state laws, and all applicable court orders.

(3)(a) No contract for private incarceration shall be entered into unless the cost of the private operation, including the state's cost for monitoring the private operation, offers a cost savings of at least ten percent (10%) to the Department of Corrections for at least the same level and quality of service offered by the Department of Corrections.

(b) Beginning in 2012, and every two (2) years thereafter, the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) shall contract with a certified public accounting firm to establish a state inmate cost per day using financial information of the Department of Corrections for the most recently completed fiscal year. The state inmate cost per day shall be certified as required by this section. The certified cost shall be used as the basis for measuring the validity of the ten percent (10%) savings of the contractor costs.

(c) Prior to engaging a certified public accountant, the PEER Committee, in conjunction with the Department of Corrections, shall develop a current cost-based model that will serve as a basis for the report produced as authorized by this section.

(4) The rates and benefits for correctional services shall be negotiated based upon American Correction Association standards, state law and court orders.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 7; Laws, 2012, ch. 399, § 1, eff from and after July 1, 2012.

Cross References — Contracts with Wilkinson County industrial development or economic development authority for the private incarceration of state inmates to comply with this section, see § 47-5-941.

Contracts for provision of private housing, care and control of juvenile offenders to comply with this section, see § 47-5-943.

Contract with a county to house certain adult male maximum security state inmates to comply with cost-savings requirements provided in this section, see § 47-5-942.

ATTORNEY GENERAL OPINIONS

Private correctional facilities and services contracted for pursuant to the provisions of Sections 47-5-1211 et seq. are not subject to the construction and purchasing laws requiring public bids. This statutory scheme constitutes a separate authority for this type of contract in addition to and outside the regular statutes. Puckett, May 31, 1996, A.G. Op. #96-0361.

Donations become a part of the cost calculation of the private prison is a factual question to be determined by the Joint Legislative Committee on Performance Evaluation and Expenditure Review through its contract with the certified public accounting firm pursuant to Section 47-5-1211. Reeves, December 6, 1996, A.G. Op. #96-0769.

A contract between Mississippi Department of Corrections and a private medical provider for healthcare services at a private prison is not subject to the state's public bid law. Johnson, Oct. 26, 2001, A.G. Op. #01-0652.

§ 47-5-1213. Term limits on contracts for operation and construction of facilities; conveyance of facilities to state.

The initial contract for the operation of a facility or for incarceration of inmates therein shall be for a period of not more than five (5) years with an option to renew for an additional period of two (2) years. Contracts for construction, purchase, or lease of a facility shall not exceed a term of twenty (20) years. Such contracts shall provide that the contractor shall convey the facility to the state, at the option of the state, for a total consideration of One Dollar ($1.00). Any contract for housing shall be subject to annual appropriation by the Legislature.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 8, eff from and after passage (approved August 23, 1994).

Cross References — Contracts with Wilkinson County industrial development or economic development authority for the private incarceration of state inmates to comply with this section, see § 47-5-941.

Contracts for provision of private housing, care and control of juvenile offenders to comply with this section, see § 47-5-943.

§ 47-5-1215. Private "correctional officers" of contractors; use of force and firearms restricted; training.

(1) A contractor's employees serving as "correctional officers" shall be allowed to use force only while on the grounds of a facility, while transporting inmates, and while pursuing escapees from a facility.

(2) Private correctional officers shall be authorized to use only such non-deadly force as the circumstances require in the following situations: to prevent the commission of a felony or misdemeanor, including escape; to defend oneself or others against physical assault; to prevent serious damage to property; to enforce institutional regulations and orders; and to prevent or quell a riot.

(3) A contractor's employees, while performing their officially assigned duties relating to the custody, control, transportation, recapture or arrest of any escaped offender assigned to a contract prison, shall be authorized to use force and firearms as necessary to pursue and recapture escapees.

(4) Private correctional officers who have been appropriately certified as determined by the contracting agency and trained pursuant to the provisions of subsection (5) shall have the right to carry and use firearms and shall exercise such authority and may use deadly force to prevent an act that could result in death or serious bodily injury to oneself or to another person.

(5) Private correctional officers shall be trained in the use of force and the use of firearms, in accordance with ACA Standards and shall be trained, at the private contractor's expense, for at least the minimum number of hours that public personnel are currently trained.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 9; Laws, 1998, ch. 581, § 2, eff from and after passage (approved April 17, 1998).

Cross References — Contracts with Wilkinson County industrial development or economic development authority for the private incarceration of state inmates to comply with this section, see § 47-5-941.

Contracts for provision of private housing, care and control of juvenile offenders to comply with this section, see § 47-5-943.

§ 47-5-1217. Employee training.

All employees of a facility operated pursuant to Sections 47-5-1201 through 47-5-1229 must receive, at a minimum, the same quality and quantity of training as that required by the state, for employees of public correctional and detention facilities. All training expenses shall be the responsibility of the contractor.

SOURCES: Laws, 1994 Ex Sess, ch. 26, § 10, eff from and after passage (approved August 23, 1994).

Cross References — Contracts with Wilkinson County industrial development or economic development authority for the private incarceration of state inmates to comply with this section, see § 47-5-941.

Contracts for provision of private housing, care and control of juvenile offenders to comply with this section, see § 47-5-943.

§ 47-5-1219. Prerequisites for contracting for correctional services; defense of suits or claims.

A contract for correctional services shall not be entered into unless the following requirements are met:

(a) In addition to fire and casualty insurance, the contractor provides at least Ten Million Dollars ($10,000,000.00) of liability insurance, specifically including insurance for civil rights claims. The liability insurance shall be issued by an insurance company with a rating of at least an A- according to A.M. Best standards. In determining the adequacy of such insurance, the Department of Finance and Administration shall determine whether:

(i) The insurance is adequate to protect the state from any and all actions by a third party against the contractor or the state as a result of the contract;

(ii) The insurance is adequate to protect the state against any and all claims arising as a result of any occurrence during the term of the contract;

(iii) The insurance is adequate to assure the contractor's ability to fulfill its contract with the state in all respects, and to assure that the contractor is not limited in this ability because of financial liability which results from judgments; and

(iv) The insurance is adequate to satisfy such other requirements specified by the independent risk management/actuarial firm.

(b) The sovereign immunity of the state shall not apply to the contractor. Neither the contractor nor the insurer of the contractor may plead the defense of sovereign immunity in any action arising out of the performance of the contract.

(c) The contractor shall post a performance bond to assure the contractor's faithful performance of the specifications and conditions of the contract. The bond is required throughout the term of the contract. The terms and conditions must be approved by the Department of Corrections and the Department of Finance and Administration and such approval is a condition precedent to the contract taking effect.

(d) The contractor shall defend any suit or claim brought against the State of Mississippi arising out of any act or omission in the operation of a private facility, and shall hold the State of Mississippi harmless from such claim or suit. The contractor shall be solely responsible for the payment of any legal or other costs relative to any such claim or suit. The contractor shall reimburse the State of Mississippi for any costs that it may incur as a result of such claim or suit immediately upon being submitted a statement therefor by the Attorney General.

The duties and obligations of the contractor pursuant to this subsection shall include, but not be limited to, any claim or suit brought under any federal or state civil rights or prisoners rights statutes or pursuant to any such rights recognized by common law or case law, or federal or state constitutions.

Any suit brought or claim made arising out of any act or omission in the operation of a private facility shall be made or brought against the contractor and not the State of Mississippi.

The Attorney General retains all rights and emoluments of his office which include direction and control over any litigation or claim involving the State of Mississippi.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 11, eff from and after passage (approved August 23, 1994).

Cross References — Contracts with Wilkinson County industrial development or economic development authority for the private incarceration of state inmates to comply with this section, see § 47-5-941.

Contracts for provision of private housing, care and control of juvenile offenders to comply with this section, see § 47-5-943.

§ 47-5-1221. Plan for resumption of state control of facility upon termination of contract.

A plan shall be developed and certified by the commissioner which demonstrates the method by which the state would resume control of the prison upon contract termination. Such plan shall be submitted for review and comment to law enforcement agencies, the district attorney and circuit judges in the county in which the prison is located.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 12, eff from and after passage (approved August 23, 1994).

Cross References — Contracts with Wilkinson County industrial development or economic development authority for the private incarceration of state inmates to comply with this section, see § 47-5-941.

Contracts for provision of private housing, care and control of juvenile offenders to comply with this section, see § 47-5-943.

§ 47-5-1223. Contract compliance officer; reimbursement of contract compliance officer's salary and expenses by private entity.

(1) The Commissioner of the Department of Corrections shall designate an existing employee of the Department of Corrections as a contract compliance officer within the department which shall monitor any contracts between the state and private entities for the operation and management of correctional facilities, and shall assure contractor compliance with its performance work statement and assure the provision of prisoner care requirements.

(2) The contract compliance officer shall be responsible for monitoring all aspects of each privatized correctional facility. The officer shall be provided an on-site work area, shall be on-site on a daily basis, and shall have access to all areas of the facilities and to offenders and staff at all times. The private contractor or contractors shall provide any and all data, reports and other materials that the contract compliance officer determines are necessary to carry out monitoring responsibilities under this section.

(3) The contract compliance officer shall report at least annually, or as requested, to the Governor, the Senate Committee on Corrections, the House Penitentiary Committee and the Joint Legislative Committee on Performance Evaluation and Expenditure Review on the performance of the private contractor or contractors.

(4) The salary and expenses of the contract compliance officer shall be reimbursed to the Department of Corrections by the private entity that has contracted to operate or manage a correctional facility.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 13; Laws, 2010, ch. 403, § 1, eff from and after July 1, 2010.

Cross References — Contracts with Wilkinson County industrial development or economic development authority for the private incarceration of state inmates to comply with this section, see § 47-5-941.

Contracts for provision of private housing, care and control of juvenile offenders to comply with this section, see § 47-5-943.

§ 47-5-1225. Nondelegable responsibilities.

No contract for private correctional facilities or services shall authorize, allow, or imply a delegation of the authority or responsibility of the state to a prison contractor to:

(a) Classify inmates or place inmates in less restrictive custody or more restrictive custody;

(b) Transfer an inmate, although the contractor may recommend in writing that the department transfer a particular inmate;

(c) Grant, deny, or revoke sentence credits;

(d) Recommend that the parole board either deny or grant parole, although the contractor may submit written reports that have been prepared in the ordinary course of business;

(e) Develop and implement procedures for calculating sentence credits or inmate release and parole eligibility dates;

(f) Require an inmate to work, except on department-approved projects; approve the type of work that inmates may perform; or award or withhold wages or sentence credits based on the manner in which individual inmates perform such work; or

(g) Determine inmate eligibility for furlough and work release.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 14, eff from and after passage (approved August 23, 1994).

Cross References — Contracts with Wilkinson County industrial development or economic development authority for the private incarceration of state inmates to comply with this section, see § 47-5-941.

Contracts for provision of private housing, care and control of juvenile offenders to comply with this section, see § 47-5-943.

§ 47-5-1227. Restrictions on employment of public officials and employees by private entities.

(1) No public official or an employee of a state agency who has duties or responsibilities related to the contracting, constructing, leasing, acquiring or operating a private correctional facility may become an employee, consultant or contract vendor to a private entity providing such facility or services to the state within one (1) year after the termination of his service or employment.

(2) Any person violating this section shall be guilty of a misdemeanor and punished by a fine of not less than Five Hundred Dollars ($500.00) but not more than One Thousand Dollars ($1,000.00).

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 15, eff from and after passage (approved August 23, 1994).

Cross References — Contracts with Wilkinson County industrial development or economic development authority for the private incarceration of state inmates to comply with this section, see § 47-5-941.

Contracts for provision of private housing, care and control of juvenile offenders to comply with this section, see § 47-5-943.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 47-5-1229. Correctional Facilities Emergency Construction Fund.

There is hereby created a special fund to be designated as the "Correctional Facilities Emergency Construction Fund." Any monies as may be appropriated by the Legislature shall be deposited into the fund. The expenditure of monies out of the fund shall be under the direction of the State Prison Emergency Construction and Management Board as spread on its minutes and such funds shall be paid by the State Treasurer upon warrants issued by the Executive Director of the Department of Finance and Administration.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 17, eff from and after passage (approved August 23, 1994).

PRISON INDUSTRY ENHANCEMENT PROGRAM

Sec.
47-5-1251. Prison Industry Enhancement Program; creation.

§ 47-5-1251. Prison Industry Enhancement Program; creation.

(1) There is created the "Prison Industry Enhancement Program," through which the Department of Corrections may contract with the nonprofit corporation organized and formed under the "Mississippi Prison Industries Act of 1990" to employ offenders within the custody of the department or prison industries. The offenders must be under the supervision of the department at all times while working. The offenders shall be paid, by the entity or entities, wages at a rate which is not less than that paid for similar work in the locality in which the work is performed. The wages may be subject to deductions which shall not, in the aggregate, exceed eighty percent (80%) of gross wages. The deductions shall be limited to the following:

(a) To pay federal, state and local taxes;

(b) To pay reasonable charges for room and board as determined by regulations issued by the Commissioner of Corrections;

(c) To support the offender's family pursuant to state statute, court order or agreement by the offender; and

(d) To pay contributions equaling not less than five percent (5%) but not more than twenty percent (20%) of the offender's gross wages into the Crime Victims' Compensation Fund as created in Section 99-41-29.

(2) Notwithstanding any other provision of the law to the contrary, the offenders shall not be qualified to receive any payments for unemployment compensation while incarcerated. However, the offenders shall not solely by their status as offenders be deprived of the right to participate in benefits made available by the federal or state government to other individuals on the basis of their employment, such as workers' compensation.

(3) Offenders who participate in the employment must do so voluntarily and must agree in advance to the specific deductions made from gross wages

pursuant to this section and to all other financial arrangements or benefits resulting from participation in the employment.

(4) The Department of Corrections shall develop rules and regulations to meet the criteria established by the Bureau of Justice Assistance under the Prison Industry Enhancement Certification Program.

SOURCES: Laws, 1996, ch. 547, § 1; Laws, 2001, ch. 434, § 3, eff from and after Mar. 14, 2001.

Cross References — Mississippi Prison Industries Act of 1990, see §§ 47-5-531 et seq.

ATTORNEY GENERAL OPINIONS

Participants of the Prison Industry Enhancement (PIE) program are employees not of the Mississippi Prison Industries Corporation, but may be considered employees of the private employers with which the Mississippi Department of Corrections contracts for workers' compensation purposes and, therefore, the Mississippi State Agencies Self-Insured Workers' Compensation Trust cannot extend workers' compensation coverage to those inmates participating in the PIE program. Self, May 5, 2000, A.G. Op. #2000-0189.

JURISDICTION OVER CORRECTIONAL FACILITIES AND GROUNDS

SEC.
47-5-1301. United States jurisdiction over correctional facilities and grounds.

§ 47-5-1301. United States jurisdiction over correctional facilities and grounds.

Notwithstanding any other provisions of law to the contrary, as a supplementary method for granting concurrent jurisdiction to the United States, the Governor of the State of Mississippi may grant to the United States full civil and criminal jurisdiction concurrent with the State of Mississippi over any correctional facility and the grounds of the facility in which are housed or located inmates committed to the custody of the United States or over any correctional facility and the grounds of the facility which are owned by a private entity that has entered into a contract for the confinement of inmates committed to the custody of the United States.

SOURCES: Laws, 1997, ch. 530, § 3, eff from and after passage (approved April 10, 1997).

INTERSTATE CORRECTIONS COMPACT

SEC.
47-5-1351. Interstate Corrections Compact; purpose and policy; definitions; contracts; procedures and rights; extradition; federal aid; when compact becomes effective; withdrawal and termination; construction and severability.

§ 47-5-1351. Interstate Corrections Compact; purpose and policy; definitions; contracts; procedures and rights; extradition; federal aid; when compact becomes effective; withdrawal and termination; construction and severability.

The Governor, on behalf of this state may execute the Interstate Corrections Compact, with any and all states legally joining therein, in substantially the following form and the Legislature signifies in advance its approval and ratification of such compact:

INTERSTATE CORRECTIONS COMPACT

Article I

Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Article II

Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had;

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had;

(d) "Inmate" means a male or female offender who is committed, under sentence to or confined in, a penal or correctional institution; and

(e) "Institution" means any penal or correctional facility, including, but not limited to, a facility for the mentally ill or mentally defective, in which inmates defined in (d) above may lawfully be confined.

Article III

Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(a) Its duration;

(b) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(c) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(d) Delivery and retaking of inmates; and

(e) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(2) The terms and provisions of this compact entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV
Procedures and Rights

(1) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge or for any other purpose permitted by the laws of the sending state, provided, that the sending state shall continue to be obligated to such payments as may be pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations, or have such obligations modified or his status changed on account of any action or proceedings in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V
Acts Not Reviewable in Receiving State: Extradition

(1) Any decisions of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving

state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states' party to this compact without interference.

(2) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI
Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending or the receiving state have made contractual provision; provided, that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefrom.

Article VII
Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two (2) states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

Article VIII
Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one (1) year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX
Other Arrangement Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X
Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

SOURCES: Laws, 2005, ch. 362, § 1, eff from and after July 1, 2005.

Comparable Laws from other States — Alabama: Code of Ala. §§ 14-13-1 et seq.
Alaska: Alaska Stat. §§ 33.36.010 et seq.
Arizona: A.R.S. § 31-491 et seq.
Arkansas: A.C.A. § 12-49-101 et seq.
California: Cal Pen Code § 11189 et seq.
Colorado: C.R.S. 24-60-1601 et seq.
Connecticut: Conn. Gen. Stat. § 18-105 et seq.
Delaware: 11 Del. C. § 6570 et seq.
District of Columbia: D.C. Code § 24-1001 et seq.
Florida: Fla. Stat. § 941.55 et seq.
Georgia: O.C.G.A. §§ 42-11-1 et seq.
Hawaii: HRS §§ 355D-1 et seq.
Idaho: Idaho Code § 20-701 et seq.
Illinois: 730 ILCS 5/3-4-4.
Indiana: Burns Ind. Code Ann. §§ 11-8-4-1 et seq.
Kansas: K.S.A. §§ 76-3001 et seq.
Kentucky: KRS § 196.610 et seq.
Maine: 34-A M.R.S. §§ 9401 et seq.
Maryland: Md. Correctional Services Code Ann. §§ 8-601 et seq.
Massachusetts: Mass. Spec. Laws ch. S138, § 1.
Michigan: MCLS §§ 3.981 et seq. MCLS § 791.211a.
Minnesota: Minn. Stat. §§ 241.28
Missouri: §§ 217.525 et seq.
Montana: Mont. Code Anno., §§ 46-19-401, 46-19-402.
Nebraska: R.R.S. Neb. §§ 29-3401, 29-3402.
Nevada: Nev. Rev. Stat. Ann. §§ 215A.010 et seq.
New Hampshire: 60 RSA 622-B:1
New Jersey: N.J. Stat. § 30:7C-1 et seq.
New Mexico: N.M. Stat. Ann. § 31-5-17
New York: NY CLS Correc §§ 100 et seq.
North Carolina: N.C. Gen. Stat. §§ 148-119 et seq.
Ohio: ORC Ann. 5120.50.
Oklahoma: 57 Okl. St. §§ 601, 602.
Oregon: ORS § 421.245 et seq.
Pennsylvania: 61 Pa. C.S. §§ 7101 et seq.
South Carolina: S.C. Code Ann. §§ 24-11-10 et seq.
Tennessee: Tenn. Code Ann. § 41-23-101 et seq.

Texas: Tex. Code Crim. Proc. art. 42.19
Utah: Utah Code Ann. §§ 77-28a-1 et seq.
Vermont: 28 V.S.A. §§ 1601 — 1610, 1621.
Virginia: Va. Code Ann. §§ 53.1-216, 53.1-217.
Washington: Rev. Code Wash. (ARCW) §§ 72.74.010 et seq.
Wisconsin: Wis. Stat. §§ 302.25, 302.255.

YOUTHFUL OFFENDERS

SEC.
47-5-1401. Establishment of Youthful Offender Unit at Central Mississippi Correctional Facility; age limitations on youth housed in unit.

§ 47-5-1401. Establishment of Youthful Offender Unit at Central Mississippi Correctional Facility; age limitations on youth housed in unit.

(1) The Mississippi Department of Corrections shall establish a Youthful Offender Unit ("YOU") at the Central Mississippi Correctional Facility. All youth ages seventeen (17) years of age and under and who are assigned to a Mississippi Department of Corrections prison shall be housed in the YOU, except that nothing in this section shall prohibit the department from housing a youth who is seventeen (17) years of age and under in a community work center or other environments that are less restrictive than a Mississippi Department of Corrections prison.

(2) Youth ages seventeen (17) and under as prescribed in this section shall be housed in the YOU, separate from adult inmates. No individual who is over the age of nineteen (19) shall be housed in the YOU. The Commissioner of the Department of Corrections shall have discretion to house individuals who are eighteen (18) and nineteen (19) years of age and who have been classified as vulnerable in the YOU.

(3) The Mississippi Department of Corrections shall provide youth housed at the YOU with the opportunity for the appropriate amounts of interactive, structured rehabilitative and/or educational programming, recreational and leisure activities outside of their cells on a daily basis, including weekends and holidays. The programming developed, as prescribed in this subsection shall, to the extent possible, be tailored to the developmental needs of adolescents.

SOURCES: Laws, 2012, ch. 489, § 2, eff from and after passage (approved Apr. 26, 2012.)

CHAPTER 7

Probation and Parole

Probation and Parole Law 47-7-1
Uniform Act for Out-of-State Parolee Supervision 47-7-71
Interstate Compact for Adult Offender Supervision 47-7-81
Mississippi Re-Entry Council 47-7-101

PROBATION AND PAROLE LAW

Sec.
47-7-1. Probation and Parole Law.
47-7-2. Definitions.
47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date.
47-7-3.1. Case plan for parole-eligible inmates; purpose; components.
47-7-3.2. Minimum time offenders convicted of crime of violence must serve before release; minimum percentage of other sentences offenders must serve before release.
47-7-4. Conditional medical release of prisoners; criteria; supervision; revocation.
47-7-5. State Parole Board created; membership; requirements; vacancies; expenses; immunity; budget; responsibilities to offenders; electronic monitoring program; central registry of paroled inmates; minimum vote required to grant parole to inmate convicted of capital murder or sex crime [Repealed effective July 1, 2018].
47-7-6. Parole Board to collect certain information and report semiannually to Oversight Task Force.
47-7-7. Repealed.
47-7-9. General powers and duties of personnel of Division of Community Corrections as field supervisors and presentence investigators.
47-7-11. Salaries, per diem and expenses.
47-7-13. Voting and recordkeeping requirements; offices, equipment, and supplies.
47-7-15. Seal of board; records and reports.
47-7-17. Examination of offender's record; eligibility for parole.
47-7-18. Conditions for release of parole-eligible inmates without hearing; hearing required under certain circumstances.
47-7-19. Correctional system officials to permit access to offenders and to give information to board.
47-7-21. Privileged information.
47-7-23. Rules and regulations.
47-7-25. Gratuities to paroled offender.
47-7-27. Return of violator of parole or earned release supervision; arrest of offender; hearing; revocation of parole; imprisonment for technical violation to be served in technical violation center.
47-7-29. Effect of conviction of felony while on parole or earned-release supervision.
47-7-31. Department of correction to investigate pardon and commutation of sentence cases upon request.
47-7-33. Power of court to suspend sentence and place defendant on probation; notice to Department of Corrections; support payments.
47-7-33.1. Pre-release assessment and written discharge plan.

47-7-34. Postrelease supervision program.
47-7-35. Terms and conditions of probation; court to determine; sex offender registry check required prior to placing offender on probation.
47-7-37. Period of probation; arrest, revocation and recommitment for violation of probation or postrelease supervision; hearing; revocation of probation for technical violation; imprisonment in technical violation center; certain restrictions on imposition of bail for persons required to register as sex offender.
47-7-37.1. Revocation of probation or post-release supervision.
47-7-38. Graduated sanctions as alternative to judicial modification or revocation of parole, probation or post-release supervision.
47-7-38.1. Technical violation centers.
47-7-39. Change of residence; transfer.
47-7-40. Earned-discharge program; eligibility; accrual of earned-discharge credits.
47-7-41. Discharge from probation.
47-7-43. Application of provisions.
47-7-45. Provisions inapplicable to Oakley Youth Development Center.
47-7-47. Earned probation program; restitution to crime victim.
47-7-49. Creation of community service revolving fund; payments by offender on probation, parole, earned-release supervision, post-release supervision, or earned probation; disposition of payments; time limit on payments [Repealed effective June 30, 2018].
47-7-51. Correctional Training Revolving Fund.
47-7-53. Department of Corrections to assume duties, powers and responsibilities of Parole Board.
47-7-55. Parole Commission; creation; purpose; membership; compensation.

§ 47-7-1. Probation and Parole Law.

This chapter shall be known as the "Probation and Parole Law."

SOURCES: Codes, 1942, § 4004; Laws, 1944, ch. 334, § 1; Laws, 1950, ch. 524, § 1; Laws, 1956, ch. 262, § 1; brought forward, Laws, 1981, ch. 465, § 90; reenacted, Laws, 1984, ch. 471, § 100; reenacted, Laws, 1986, ch. 413, § 100, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1981 of ch. 465, § 118, which provided for the automatic repeal of provisions reenacting the Department of Corrections and the State Parole Board on June 30, 1984, was repealed by Laws of 1984, ch. 471, § 126. In turn, Laws of 1984, ch. 471, § 128, provided for the automatic repeal of these provisions from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986), repealed Laws of 1984, ch. 471, § 128, thereby removing the repeal date.

Cross References — Uniform act for out-of-state parolee supervision, see § 47-7-71.

RESEARCH REFERENCES

ALR. Offenses and convictions covered by pardon. 35 A.L.R.2d 1261.

Right to assistance of counsel at proceedings to revoke probation. 44 A.L.R.3d 306.

Validity of statutes prohibiting or restricting parole, probation, or suspension of sentence in cases of violent crimes. 100 A.L.R.3d 431.

Right of convicted defendant to refuse

probation. 28 A.L.R.4th 736.

§ 47-7-2. Definitions.

For purposes of this chapter, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Adult" means a person who is seventeen (17) years of age or older, or any person convicted of any crime not subject to the provisions of the youth court law, or any person "certified" to be tried as an adult by any youth court in the state.

(b) "Board" means the State Parole Board.

(c) "Parole case plan" means an individualized, written accountability and behavior change strategy developed by the department in collaboration with the parole board to prepare offenders for release on parole at the parole eligibility date. The case plan shall focus on the offender's criminal risk factors that, if addressed, reduce the likelihood of reoffending.

(d) "Commissioner" means the Commissioner of Corrections.

(e) "Correctional system" means the facilities, institutions, programs and personnel of the department utilized for adult offenders who are committed to the custody of the department.

(f) "Criminal risk factors" means characteristics that increase a person's likelihood of reoffending. These characteristics include: antisocial behavior; antisocial personality; criminal thinking; criminal associates; dysfunctional family; low levels of employment or education; poor use of leisure and recreation; and substance abuse.

(g) "Department" means the Mississippi Department of Corrections.

(h) "Detention" means the temporary care of juveniles and adults who require secure custody for their own or the community's protection in a physically restricting facility prior to adjudication, or retention in a physically restricting facility upon being taken into custody after an alleged parole or probation violation.

(i) "Discharge plan" means an individualized written document that provides information to support the offender in meeting the basic needs identified in the pre-release assessment. This information shall include, but is not limited to: contact names, phone numbers, and addresses of referrals and resources.

(j) "Evidence-based practices" means supervision policies, procedures, and practices that scientific research demonstrates reduce recidivism.

(k) "Facility" or "institution" means any facility for the custody, care, treatment and study of offenders which is under the supervision and control of the department.

(*l*) "Juvenile," "minor" or "youthful" means a person less than seventeen (17) years of age.

(m) "Offender" means any person convicted of a crime or offense under the laws and ordinances of the state and its political subdivisions.

(n) "Pre-release assessment" means a determination of an offender's ability to attend to basic needs, including, but not limited to, transportation, clothing and food, financial resources, personal identification documents, housing, employment, education, and health care, following release.

(o) "Special meetings" means those meetings called by the chairman with at least twenty-four (24) hours' notice or a unanimous waiver of notice.

(p) "Supervision plan" means a plan developed by the community corrections department to manage offenders on probation and parole in a way that reduces the likelihood they will commit a new criminal offense or violate the terms of supervision and that increases the likelihood of obtaining stable housing, employment and skills necessary to sustain positive conduct.

(q) "Technical violation" means an act or omission by the probationer that violates a condition or conditions of probation placed on the probationer by the court or the probation officer.

(r) "Transitional reentry center" means a state-operated or state-contracted facility used to house offenders leaving the physical custody of the Department of Corrections on parole, probation or post-release supervision who are in need of temporary housing and services that reduce their risk to reoffend.

(s) "Unit of local government" means a county, city, town, village or other general purpose political subdivision of the state.

(t) "Risk and needs assessment" means the determination of a person's risk to reoffend using an actuarial assessment tool validated on Mississippi corrections populations and the needs that, when addressed, reduce the risk to reoffend.

SOURCES: Laws, 1976, ch. 440, § 3; reenacted, Laws, 1981, ch. 465, § 91; reenacted, Laws, 1984, ch. 471, § 101; reenacted, Laws, 1986, ch. 413, § 101; Laws, 1994, 1st Ex Sess, ch. 25, § 2; Laws, 2014, ch. 457, § 47, eff from and after July 1, 2014.

Editor's Note — Laws of 1976, ch. 465, § 118, provides as follows:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Corrections Act of 1976."

Amendment Notes — The 2014 amendment added (c), (f), (i), (j), (n), (p), (q), (r), and (t) and redesignated the remaining subsections accordingly.

§ 47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date.

(1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi Department of Corrections for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the department, and who has served not less than one-fourth (¼) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural

life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67;

(c)(i) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (c)(i) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This paragraph (c)(i) shall not apply to persons convicted after September 30, 1994;

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this paragraph (c)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon. This paragraph (c)(ii) shall not apply to persons convicted after July 1, 2014;

(d) No person shall be eligible for parole who, on or after July 1, 1994, is charged, tried, convicted and sentenced to life imprisonment without eligibility for parole under the provisions of Section 99-19-101;

(e) No person shall be eligible for parole who is charged, tried, convicted and sentenced to life imprisonment under the provisions of Section 99-19-101;

(f) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995, except that an offender convicted of only nonviolent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph. In addition to other requirements, if an offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole or the offender may be required to complete a post-release drug and alcohol program as a condition of parole. For purposes of this paragraph, "nonviolent crime" means a felony other than homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under Section 97-5-33 or

Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a violation of Section 63-11-30(5). An offender convicted of a violation under Section 41-29-139(a), not exceeding the amounts specified under Section 41-29-139(b), may be eligible for parole. In addition, an offender incarcerated for committing the crime of possession of a controlled substance under the Uniform Controlled Substances Law after July 1, 1995, shall be eligible for parole. This paragraph (f) shall not apply to persons convicted on or after July 1, 2014;

(g)(i) No person who, on or after July 1, 2014, is convicted of a crime of violence pursuant to Section 97-3-2, a sex crime or an offense that specifically prohibits parole release, shall be eligible for parole. All persons convicted of any other offense on or after July 1, 2014, are eligible for parole after they have served one-fourth (¼) of the sentence or sentences imposed by the trial court.

(ii) Notwithstanding the provisions in paragraph (i) of this subsection, a person serving a sentence who has reached the age of sixty (60) or older and who has served no less than ten (10) years of the sentence or sentences imposed by the trial court shall be eligible for parole. Any person eligible for parole under this subsection shall be required to have a parole hearing before the board prior to parole release. No inmate shall be eligible for parole under this paragraph of this subsection if:

1. The inmate is sentenced as a habitual offender under Sections 99-19-81 through 99-19-87;
2. The inmate is sentenced for a crime of violence under Section 97-3-2;
3. The inmate is sentenced for an offense that specifically prohibits parole release;
4. The inmate is sentenced for trafficking in controlled substances under Section 41-29-139(f);
5. The inmate is sentenced for a sex crime; or
6. The inmate has not served one-fourth (¼) of the sentence imposed by the court.

(iii) Notwithstanding the provisions of paragraph (1)(a) of this section, any offender who has not committed a crime of violence under Section 97-3-2 and has served twenty-five percent (25%) or more of his sentence may be paroled by the parole board if, after the sentencing judge or if the sentencing judge is retired, disabled or incapacitated, the senior circuit judge authorizes the offender to be eligible for parole consideration.

(2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section.

(3) The State Parole Board shall, by rules and regulations, establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. The parole hearing date

shall occur when the offender is within thirty (30) days of the month of his parole eligibility date. The parole eligibility date shall not be earlier than one-fourth (¼) of the prison sentence or sentences imposed by the court.

(4) Any inmate within twenty-four (24) months of his parole eligibility date and who meets the criteria established by the classification board shall receive priority for placement in any educational development and job training programs that are part of his or her parole case plan. Any inmate refusing to participate in an educational development or job training program that is part of the case plan may be in jeopardy of noncompliance with the case plan and may be denied parole.

SOURCES: Codes, 1942, § 4004-03; Laws, 1944, ch. 334, § 2; Laws, 1946, ch. 486, § 2; Laws, 1950, ch. 524, § 4; Laws, 1958, ch. 233, § 2; Laws, 1964, ch. 366; Laws, 1976, ch. 440, § 79; Laws, 1976, ch. 470, § 5; Laws, 1980, ch. 511; reenacted, Laws, 1981, ch. 465, § 92; Laws, 1982, ch. 431, § 1; reenacted, Laws, 1984, ch. 471, § 102; Laws, 1985, ch. 499, § 16; Laws, 1985, ch. 531, § 3; reenacted and amended, Laws, 1986, ch. 413, § 102; Laws, 1986, ch. 435, § 1; Laws, 1989, 1st Ex Sess, ch. 3, § 4; Laws, 1993, ch. 443, § 1; Laws, 1994, ch. 566, § 2; Laws, 1994 Ex Sess, ch. 25, § 5; Laws, 1995, ch. 575, § 2; Laws, 1995, ch. 596, § 3; Laws, 2001, ch. 393, § 11; Laws, 2002, ch. 413, § 1; Laws, 2004, ch. 407, § 1; Laws, 2004, ch. 520, § 1; Laws, 2004, ch. 569, § 1; Laws, 2005, ch. 503, § 1; Laws, 2008, ch. 438, § 1; Laws, 2010, ch. 536, § 4; Laws, 2014, ch. 457, § 40; Laws, 2015, ch. 448, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 1 of ch. 407 Laws of 2004, effective from and after passage (approved April 22, 2004), amended this section. Section 1 of ch. 520, Laws of 2004, effective from and after July 1, 2004 (approved May 4, 2004), and Section 1 of ch. 569, Laws of 2004, effective from and after passage (approved May 14, 2004), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 569, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — In (1)(h), there is a reference to "vulnerable adults." Laws of 2010, ch. 357, amended the "Vulnerable Adults Act," codified at §§ 43-47-1 et seq., to be the "Vulnerable Persons Act."

Laws of 1994, ch. 566, § 5, provides as follows:

"SECTION 5. The provisions of this act shall apply to any case in which pre-trial, trial or resentencing proceedings take place after July 1, 1994."

Section 97-3-67 referred to in (1)(b) was repealed by Laws of 1998, ch. 549, § 6, eff from and after July 1, 1998. For current provisions, see §§ 97-3-65, 97-3-95, and 97-5-23.

Laws of 2004, ch. 569, § 4 provides:

"SECTION 4. It is the intent that the amendments to Section 47-7-3, Mississippi Code of 1972, contained in this House Bill No. 668, 2004 Regular Session, shall supersede the amendments to Section 47-7-3, contained in Senate Bill No. 2680, 2004 Regular Session, and House Bill No. 669, 2004 Regular Session."

Section 4, Chapter 448, Laws of 2015, provides:

"SECTION 4. Sections 1 and 2 of this act shall take effect and be in force from and after July 1, 2015. Section 3 of this act shall take effect and be in force from and after its passage [approved April 20, 2015]."

Amendment Notes — The 2014 amendment deleted (1)(c) and former (1)(g) and redesignated the remaining subsections accordingly; in present (1)(c)(ii) and (1)(f), added a sentence to the end of each subsection; and added present (1)(g); in (2), deleted "; however, this subsection shall not apply to the advancement of parole eligibility dates pursuant to the Prison Overcrowding Emergency Powers Act. Moreover, meritorious earned time allowances may be used to reduce the time necessary to be served for parole eligibility as provided in paragraph (c) of subsection (1) of this section." from the end of the subsection; in (3), substituted "The parole hearing ... by the court." for "Such tentative parole hearing date shall be calculated by a formula taking into account the offender's age upon first commitment, number of prior incarcerations, prior probation or parole failures, the severity and the violence of the offense committed, employment history, whether the offender served in the United States Armed Forces and has an honorable discharge, and other criteria which in the opinion of the board tend to validly and reliably predict the length of incarceration necessary before the offender can be successfully paroled."; in (4), added "that are part of his or her parole case plan" to the end of the first sentence; inserted "that is part of the case plan" following "and job training program" in the second sentence; and substituted "in jeopardy of noncompliance with the case plan and may be denied parole" for "ineligible for parole" at the end of the second sentence.

The 2015 amendment rewrote (1)(g)(iii), which read: "Notwithstanding the provisions of paragraph (1)(a) of this section, any nonviolent offender who has served twenty-five percent (25%) or more of his sentence may be paroled if the sentencing judge or if the sentencing judge is retired, disabled or incapacitated, the senior circuit judge, recommends parole to the Parole Board and the Parole Board approves."

Cross References — Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Penalty of life imprisonment without parole for sale of specified quantities of certain drugs, see § 41-29-139.

Availability of parole to persons convicted under the Uniform Controlled Substances Law or prior law superseded thereby, see § 41-29-149.

Good time, see §§ 47-5-138 et seq.

Advancement of parole eligibility dates during periods of prison overcrowding, see §§ 47-5-701 through 47-5-729.

Prison Overcrowding Emergency Powers Act, see §§ 47-5-701 through 47-5-729.

Exclusivity of State Parole Board's responsibility for granting or revoking parole, as provided by this section, see § 47-7-5.

Condition of probation upon suspended sentence, see §§ 47-7-33 et seq.

Requirement that persons on parole or probation make payments to community service revolving fund, see § 47-7-49.

Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Person convicted of aggravated domestic violence ineligible for parole under the provisions of this section, see § 97-3-7.

Ineligibility for parole of person whose death sentence has been changed to life imprisonment should death penalty be declared unconstitutional, see § 99-19-107.

JUDICIAL DECISIONS

1. In general; construction.
2. Constitutionality.
3. Consecutive sentences.
4. Eligibility for earned good time.
5. Change in law, regulation, or interpretation; ex post facto effect.
6. Argument to, or consideration by, jury.
7. Jury instructions.
8. Miscellaneous.
9. Ineffective assistance of counsel.
10. Sex offenders.

1. In general; construction.

Circuit court did not err in denying a petition for post-conviction relief because although petitioner was given incorrect information regarding his parole eligibility, the error was harmless; the motivating factor for petitioner's guilty pleas was not his parole eligibility the dismissal of five felony indictments, and any misinformation petitioner received concerning parole eligibility was harmless and did not invalidate his voluntary guilty pleas. Mosley v. State, — So. 3d —, 2014 Miss. App. LEXIS 613 (Miss. Ct. App. Oct. 28, 2014).

Miss. Code Ann. § 97-3-21 was not unconstitutionally vague and did not apply to the inmate where the inmate confused parole with conditional release as: (1) Miss. Code Ann. § 47-7-3(1)(f) prohibited parole for an inmate sentenced to life under Miss. Code Ann. § 99-19-101 for capital offenses; (2) since the inmate pled guilty to murder, carrying a life sentence, he was convicted of a capital offense as defined in Miss. Code Ann. § 1-3-4; and (3) the inmate was eligible to petition for conditional release at age 65 under Miss. Code Ann. § 47-5-139(1)(a). Higginbotham v. State, 114 So. 3d 9 (Miss. Ct. App. 2012), writ of certiorari denied by 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

Miss. Code Ann. § 47-7-3(1)(g) does not abolish parole. It applies only to the internal operating procedures of the Department of Corrections and the prisons and does not affect a judge's sentencing prerogative under the criminal statutes. Parker v. State, 30 So. 3d 1222 (Miss. 2010).

Defendant's postconviction review motion was correctly denied because remarks made by the circuit judge during defendant's sentencing hearing were merely surplusage, in that they were comments concerning defendant's eligibility for parole; the parole board, not the circuit court, had exclusive authority for granting parole within the parameters set forth in Miss. Code. Ann. § 47-7-3. Chandler v. State, 27 So. 3d 1199 (Miss. Ct. App. 2010).

Dismissal of defendant's motion for post-conviction relief was proper because Miss. Code Ann. § 47-7-3(d)(i) (now § 47-7-3(1)(c)(i)) foreclosed armed robbers convicted after October 1, 1994, from parole eligibility. Defendant had pleaded guilty on March 20, 2002, to one count of armed robbery and five counts of kidnapping. Banks v. State, 37 So. 3d 81 (Miss. Ct. App. 2009), writ of certiorari denied by 36 So. 3d 455, 2010 Miss. LEXIS 288 (Miss. 2010).

Inmate's allegation that his sentence was illegal because he was sentenced under a revised section of Miss. Code Ann. § 47-7-3 was rejected. Under § 47-7-3(1)(d)(ii) (now § 47-7-3(1)(c)(ii)) , armed robbers convicted after October 1, 1994, were foreclosed from parole eligibility; because defendant pleaded guilty to armed robbery in 2004, he was not eligible for parole. Poss v. State, 17 So. 3d 167 (Miss. Ct. App. 2009).

Dismissal of an inmate's petition to show cause was proper as the Mississippi State Parole Board had absolute discretion to confer or deny parole under Miss. Code Ann. § 47-7-3, and the inmate failed to show that his due process rights were violated as there was no constitutionally recognized liberty interest with regard to parole. Hopson v. Miss. State Parole Bd., 976 So. 2d 973 (Miss. Ct. App. 2008).

Trial court did not err in denying the inmate's petition for a writ of mandamus; Miss. Code Ann. § 47-7-3 did not require the parole board to give the inmate a psychiatric evaluation prior to the inmate's parole hearings; rather § 47-7-3 clearly stated that an inmate must be eligible for parole before he was entitled to a psychiatric evaluation. Also, the inmate did not have a liberty interest in a psychiatric examination because Miss. Code Ann. § 47-7-3 and Miss. Code Ann. § 47-7-17 used the permissive "may" and not the mandatory "shall." Edmond v. Miller, 942 So. 2d 203 (Miss. Ct. App. 2006), writ of certiorari denied by 942 So. 2d 164, 2006 Miss. LEXIS 718 (Miss. 2006).

Defendant's capital murder conviction was proper because he did not need to receive a sentencing hearing since, even absent a procedural bar, if the State was not seeking the death penalty, the only possible sentence for conviction of capital murder was life without parole, Miss. Code Ann. § 99-19-101(1) and 47-7-3(1)(f). Thus, a sentencing hearing was not necessary. Davis v. State, 914 So. 2d 200 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 746 (Miss. 2005), writ of certiorari denied by 549 U.S. 856, 127 S. Ct. 133, 166 L. Ed. 2d 98, 2006 U.S. LEXIS 6743, 75 U.S.L.W. 3167 (2006).

Trusty time reduces the length of the sentences a defendant is required to serve, which in turn results in an earlier parole eligibility date. Lizana v. Scott, 910 So. 2d 31 (Miss. Ct. App. 2005).

Mississippi Parole Board is not required to place a prisoner on parole after a prisoner completes his sentences described in Miss. Code Ann. § 47-7-3. Lizana v. Scott, 910 So. 2d 31 (Miss. Ct. App. 2005).

Where the circuit court sentenced appellant who pled guilty to armed robbery to a fourteen-year sentence, but suspended seven years from that sentence, leaving a seven-year sentence, appellant was not subject to the ten-year minimum service requirement of Miss. Code Ann. § 47-7-3(d)(i) (now § 47-7-3(1)(c)(i)). Edmond v. State, 906 So. 2d 798 (Miss. Ct. App. 2004).

Phrase "first offender," when used in Miss. Code Ann. § 47-7-3(1)(g), describes those incarcerated for their first and sole offense; later convictions end "first offender" status even if the offenses occurred before the first conviction. McClurg v. State, — So. 2d —, 2003 Miss. App. LEXIS 592 (Miss. Ct. App. June 24, 2003), opinion withdrawn by 2004 Miss. App. LEXIS 413 (Miss. Ct. App. Apr. 13, 2004), substituted opinion at 870 So. 2d 681, 2004 Miss. App. LEXIS 572 (Miss. Ct. App. 2004).

Reading Miss. Code Ann. §§ 97-3-21, 99-19-101(1), 47-7-3(1)(f), together indicates that a defendant on trial for capital murder may only be sentenced to death or life imprisonment without the eligibility of parole. Flowers v. State, 842 So. 2d 531 (Miss. 2003), remanded by 2006 Miss. LEXIS 356 (Miss. June 29, 2006).

Defendant was not entitled to parole consideration on a rape conviction based on the fact that defendant was 19 when the offense was committed because the former Miss. Code Ann. § 47-7-3 allowed parole consideration only in cases where the defendant was convicted of statutory rape; former Miss. Code Ann. § 47-5-139 precluded good time credit for any sex offense. Braziel v. Bailey, 835 So. 2d 962 (Miss. Ct. App. Jan. 28, 2003).

According to Miss. Code Ann. § 47-7-3(1)(f), there is no longer the possibility of life imprisonment; by giving only the sentencing options of death or life imprisonment without parole, the trial judge properly gave the jury all the instructions that were needed. Flowers v. State, — So. 2d —, 2003 Miss. LEXIS 67 (Miss. Feb. 20, 2003), opinion withdrawn by, substituted opinion at 842 So. 2d 531, 2003 Miss. LEXIS 149 (Miss. 2003).

When read in pari materia, § 97-3-21 and this section provide juries with the option of sentencing capital defendants to life without parole as long as any proceeding, from pretrial through resentencing, that follows the actual charge occurs after July 1, 1994; simultaneously, the two statutes preclude the parole board from granting parole to any capital defendant who was charged after July 1, 1994. West v. State, 725 So. 2d 872 (Miss. 1998).

Parole statutes contain no mandatory language, but instead employ permissive "may" rather than "shall," and thus prisoners have no constitutionally recognized liberty interest in parole. Vice v. State, 679 So. 2d 205 (Miss. 1996).

The Mississippi parole statutes do not create a constitutionally protected liberty interest in the form of an expectation of parole because of the use of the permissive "may" in § 47-7-3, which provides that a prisoner "may be released on parole as hereinafter provided," read in the context of the other provisions of that section and, as well, those of § 47-7-17. Thus, Mississippi law did not vest a convicted and incarcerated felon with a liberty interest in parole entitling him to due process of law incident to his application for parole. Harden v. State, 547 So. 2d 1150 (Miss. 1989).

Language of statute concerning parole and probation is mandate to Parole Board and not to courts, and is unnecessary and surplusage in sentence. Gardner v. State, 514 So. 2d 292 (Miss. 1987).

Absolute discretion conferred on parole board in Mississippi affords prisoner no constitutionally recognized liberty interest in being released on parole. Scales v. Mississippi State Parole Bd., 831 F.2d 565 (5th Cir. 1987).

Reasonable and harmonious construction of §§ 47-5-138, 47-5-139, and 47-7-3 is that legislature intended them to maintain enhanced penalty that § 99-19-81 imposes on habitual offenders, which penalty includes denial of certain privileges available to other prisoners. Perkins v. Cabana, 794 F.2d 168 (5th Cir. 1986), cert. denied, 479 U.S. 936, 107 S. Ct. 414, 93 L. Ed. 2d 366 (1986).

In a prosecution for armed robbery involving a firearm, the defendant was properly convicted under § 47-7-3(d) (now § 47-7-3(1)(c)) where, although he was not the person who actually robbed the bank, he was an aider and abettor and therefore, under § 97-1-3, was considered a principal. Anderson v. State, 397 So. 2d 81 (Miss. 1981).

2. Constitutionality.

Based on Miller v. Alabama, 132 S. Ct. 2445 (2012), Parker v. State, 119 So. 3d 987 (Miss. 2013), and Jones v. State, 122 So. 3d 698 (Miss. 2013), an inmate who was 17 years old at the time he was involved in the robbery that led to his capital murder guilty plea and a sentence of life in prison without eligibility for parole was entitled to a new sentencing hearing to consider a sentence that would allow parole. Thomas v. State, 130 So. 3d 157 (Miss. Ct. App. 2014).

Trial court properly dismissed appellant's suit alleging the Mississippi Parole Board's denial of his parole was racially motivated and biased, as he did not present evidence that established a violation of his equal-protection rights by the Board in its application of the parole statutes based on his suspect classification. Wilde v. Miss. Parole Bd., — So. 3d —, 2013 Miss. App. LEXIS 780 (Miss. Ct. App. Nov. 19, 2013), writ of certiorari denied by 2014 Miss. LEXIS 398 (Miss. Aug. 7, 2014).

This section does not violate the Miller mandate so long as the sentencing authority accounts for characteristics and circumstances unique to juveniles. Jones v. State, 122 So. 3d 698 (Miss. 2013).

As defendant was 15 at the time of the murder and was statutorily ineligible for parole, and as Miller v. Alabama, 2012 U.S. LEXIS 4873, was decided while his appeal was pending, his life sentence was vacated and the case was remanded so the trial court could consider the Miller factors before determining sentence. Parker v. State, 119 So. 3d 987 (Miss. 2013).

Miss. Code Ann. § 47-7-3(1)(h) (now § 47-7-3(1)(f)) can constitutionally be applied to juveniles provided that the sentencing authority considers the factors of Miller v. Alabama, 2012 U.S. LEXIS 4873, in imposing the sentence. Parker v. State, 119 So. 3d 987 (Miss. 2013).

Trial court did not err in dismissing an inmate's complaint against the State seeking an interpretation of Miss. Code Ann. §§ 47-7-3 and 47-7-5 and claiming that the statutes were unconstitutional because he trial court lacked jurisdiction to consider the inmate's claims; the inmate's concerns failed to state a constitutional claim sufficient for the trial court to assert jurisdiction. Rochell v. State, 36 So. 3d 479 (Miss. Ct. App. 2010).

Miss. Code Ann. § 47-7-3 is neutral on its face and contains no language separating individuals based on suspect classifications. Hopson v. Miss. State Parole Bd., 976 So. 2d 973 (Miss. Ct. App. 2008).

Trial court erred in dismissing an inmate's constitutional challenge to Miss. Code Ann. § 47-7-3(1)(g) for lack of standing, as it relied on extra-record information to find that the inmate was not a "first offender" subject to the amendment. McClurg v. State, — So. 2d —, 2003 Miss. App. LEXIS 592 (Miss. Ct. App. June 24, 2003), opinion withdrawn by 2004 Miss. App. LEXIS 413 (Miss. Ct. App. Apr. 13, 2004), substituted opinion at 870 So. 2d 681, 2004 Miss. App. LEXIS 572 (Miss. Ct. App. 2004).

Inmate challenging an amendment to Miss. Code Ann. § 47-7-3 should have named the State Parole Board and individuals in their official capacities who could both have defended the statute and provided any ordered relief; however, the trial court should not have dismissed the suit on the merits no matter how faulty the complaint was found to be. McClurg v. State, — So. 2d —, 2003 Miss. App. LEXIS 592 (Miss. Ct. App. June 24, 2003), opinion withdrawn by 2004 Miss. App. LEXIS 413 (Miss. Ct. App. Apr. 13, 2004), substituted opinion at 870 So. 2d 681, 2004 Miss. App. LEXIS 572 (Miss. Ct. App. 2004).

Where an inmate challenged the constitutionality of an amendment to Miss. Code Ann. § 47-7-3, in considering the question of the ripeness of the inmate's claim, it was not a requirement that he be on the verge of eligibility for release if his arguments were accepted. McClurg v. State, — So. 2d —, 2003 Miss. App. LEXIS 592 (Miss. Ct. App. June 24, 2003), opinion withdrawn by 2004 Miss. App. LEXIS 413 (Miss. Ct. App. Apr. 13, 2004), substituted opinion at 870 So. 2d 681, 2004 Miss. App. LEXIS 572 (Miss. Ct. App. 2004).

This section prohibits probation for an activity that common sensibly constitutes "sex crimes" and therefore, is not so vague as to be unconstitutional. Genry v. State, 735 So. 2d 186 (Miss. 1999).

3. Consecutive sentences.

Inmate argued that he should have been released after ten years, but that was an incorrect application of the law, because he was serving three separate consecutive sentences on drug offenses. Consecutive sentences with statutory minimums could not be combined for parole eligibility purposes, and he was required to serve 10 years of his 30-year sentence, one-fourth of his 7-year sentence, and one-fourth of his 18-year sentence, for a total of 16 years, three months; his parole eligibility date was to be calculated in the same way as his tentative release date. Lizana v. Scott, 910 So. 2d 31 (Miss. Ct. App. 2005).

Parole board's application and interpretation of former Miss. Code Ann. § 47-7-3 (1), as applied to the inmate's sentence, was proper; thus, where the inmate was resentenced to life on the murder conviction, and given a 39-year sentence on the rape charge and a 30-year sentence on the kidnapping charge, the sentences running consecutively, the inmate was not eligible for parole until the inmate had served 30 years. McGhee v. Johnson, 868 So. 2d 1051 (Miss. Ct. App. 2004).

Where a defendant is convicted of capital murder in a prosecution in which the state does not seek the death penalty, the trial judge may impose life imprisonment without parole without formally returning the matter to the jury for sentencing since that is the only sentence possible in such a situation. Kha Tao Pham v. State, 716 So. 2d 1100 (Miss. 1998).

A defendant who was sentenced to 10 years imprisonment for armed robbery and 15 years imprisonment for manslaughter to run consecutively, would be eligible for parole on March 30, 1993, where he began the service of his 10-year armed robbery sentence on the date of his initial arrest pursuant to § 99-19-23, he was legally released from that sentence 10 years later on February 5, 1990 but remained held under the 15-year manslaughter sentence, and he earned substantial meritorious earned time; although he would ordinarily have been required to serve at least ¼ of the manslaughter sentence-3 years and 9 months-before he became eligible for parole, his earned time advanced his earliest parole eligibility date by approximately 7 months. Milam v. State, 578 So. 2d 272 (Miss. 1991).

Under the requirement of § 47-7-3 that a person under a life sentence becomes eligible for parole after ten years, a prisoner serving three consecutive life terms would not be eligible for parole until he had served at least ten years of each life sentence less 30 percent of earned good time, since § 47-5-139(3) mandates the mathematical process of multiplying the number of life sentences imposed upon the prisoner by ten years to determine the date upon which the prisoner would become eligible for parole. Davis v. State, 429 So. 2d 262 (Miss. 1983).

4. Eligibility for earned good time.

Trial court did not err in upholding the decision of the Mississippi Department of Corrections (MDOC) to deny an inmate trusty status because even if the inmate was granted trusty status, he could not use any earned trusty time to reduce the time that he had to serve before becoming eligible for parole when the MDOC, pursuant to Miss. Code Ann. § 47-7-3(2), stopped applying trusty time to reduce an offender's parole eligibility date, and the MDOC's decision to change its application of the trusty-time policy was not an ex post facto application of the law as to defendant; therefore, the inmate's placement into trusty status would not reduce the amount of time that he had to serve before becoming eligible for parole on his kidnaping conviction. Rice v. State, 28 So. 3d 683 (Miss. Ct. App. 2010).

In a post-conviction relief case in which a pro se inmate had pled guilty to armed robbery, he argued unsuccessfully that constitutional rights were violated because he was sentenced to serve a mandatory 10-year sentence without the benefit of earned time. Pursuant to Miss. Code Ann. § 47-5-139(1)(e), an inmate was not eligible for earned-time credit when the inmate had not served the mandatory time required for parole eligibility for a conviction of robbery or attempted robbery with a deadly weapon, and, pursuant to Miss. Code Ann. § 47-7-3(1)(d)(ii) (now § 47-7-3(1)(c)(ii)) , he was not eligible for parole since he had been convicted of armed robbery after October 1, 1994. Diggs v. State, 46 So. 3d 361 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 636, 2010 Miss. LEXIS 561 (Miss. 2010).

Despite the fact that an inmate was entitled to an earned-time allowance of one-half of his total sentence, including mandatory time because he was convicted before the effective date of Miss. Code Ann. § 47-5-139(1)(e), the earned-time allowance did not reduce the mandatory portions of his sentences or accelerate his parole eligibility date under Miss. Code Ann. § 47-7-3(1) or his tentative discharge date. Adams v. Gibbs, 988 So. 2d 395 (Miss. Ct. App. 2008).

Although appellant argued that the trial court failed to inform him that he would be eligible for earned time pursuant to Miss. Code Ann. § 47-5-139(1) only after serving 10 years of his sentence, because appellant was convicted after October 1, 1994, appellant was not eligible for parole pursuant to Miss. Code Ann. § 47-7-3(1)(d)(ii) (now § 47-7-3(1)(c)(ii)). Since appellant was not eligible for parole, appellant was precluded from accumulating earned time pursuant to § 47-5-139(1)(e). Robinson v. State, 4 So. 3d 361 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 112 (Miss. 2009).

Circuit court properly dismissed a petitioner's request for post-conviction relief because the time served for armed robbery was mandatory time to be served day for day. Wells v. State, 936 So. 2d 479 (Miss. Ct. App. 2006).

A prisoner was not permitted to earn, but not use, good time credit during service of the mandatory portion of his period of confinement and then use that good time earned upon expiration of the mandatory portion of the sentence. Williams v. Puckett, 624 So. 2d 496 (Miss. 1993).

A defendant convicted of armed robbery was not eligible to reduce his sentence with the grant of administrative good time, pursuant to § 47-5-139, since earned time for good conduct and performance only applies to inmates who are eligible for parole, and defendant was not entitled to parole under § 47-7-3, which required him to serve his full 10-year sentence. Cooper v. State, 439 So. 2d 1277 (Miss. 1983).

5. Change in law, regulation, or interpretation; ex post facto effect.

Defendant's sentence of life imprisonment without eligibility for parole after he was convicted of murder was proper because he was convicted of the violent crime of murder after January 1, 2000 and was not eligible for parole according to Miss. Code Ann. § 47-7-3(1)(g); nor did the appellate court find that his sentence was grossly disproportionate to the crime committed. Fannings v. State, 997 So. 2d 953 (Miss. Ct. App. 2008).

Trial court properly found appellant ineligible for parole because Miss. Code Ann. § 47-7-3(1)(d)(ii) (now § 47-7-3(1)(c)(ii)) applied to the case due to the fact that appellant was convicted of armed robbery after October 1, 1994; hence, appellant's civil action against the Mississippi department of corrections and its commissioner for failing to provide appellant with a parole eligibility date was properly dismissed. Sykes v. Epps, 963 So. 2d 31 (Miss. Ct. App. 2007).

Where petitioner's plea counsel was unaware that the law had changed and required convicted armed robbers to serve every day of their sentence, the post-conviction court set aside petitioner's fifteen-year sentence for armed robbery entered in accordance with the plea agreement. Prior to entering his guilty plea, counsel erred by telling petitioner that he would be eligible for parole after serving ten years of his fifteen year sentence. Hudson v. State, 932 So. 2d 842 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 509 (Miss. 2006).

Statutory amendment that required that 85% of sentence be served and that eliminated opportunities for parole that had previously existed was an ex post facto law as applied to defendants who had been charged with crimes before effective date of statute and whose charges were not to be disposed of until after effective date. Puckett v. Abels, 684 So. 2d 671 (Miss. 1996).

A 7-year sentence for armed robbery committed with a knife in 1980 in violation of § 97-3-79 was not an unconstitutional application of an ex post facto law, even though § 47-7-3 denied eligibility for parole prior to 1982 only when a robbery was committed with the display of a firearm, where the sentencing order merely established that the defendant serve 7 years and made no mention of "mandatory" or "without parole." Additionally, the sentencing chapter and the parole chapter are separate and distinct; the granting of parole or denial of parole under § 47-7-3 is the exclusive responsibility of the state parole board, which is independent of the circuit court's sentencing authority. Thus, sentencing authority was provided for under § 97-3-79, rather than § 47-7-3, and the defendant was not "sentenced" under the parole statute, which was later amended. Mitchell v. State, 561 So. 2d 1037 (Miss. 1990).

Defendant who enters plea of guilty to charge of armed robbery pursuant to plea bargain agreement in reliance upon erroneous advice of attorney that defendant will be eligible for earned good time and will be subject to release after serving 7 years of sentence is entitled to vacation of guilty plea and reinstatement of innocent plea when Mississippi Department of Corrections changes administrative policy to comply with §§ 47-5-139, 47-7-3, thereby requiring that defendant serve minimum of 10 years. Coleman v. State, 483 So. 2d 680 (Miss. 1986).

A petitioner who enters a guilty plea to armed robbery pursuant to plea bargain agreement upon erroneous advice of counsel that petitioner will be eligible for earned good time and will be subject to release after serving 7 years of sentence is not subjected to ex post facto law when Mississippi Department of Corrections changes administrative policy to comply with §§ 47-5-139 and 47-7-3, causing petitioner to serve minimum of 10 years. Coleman v. State, 483 So. 2d 680 (Miss. 1986).

A defendant convicted of armed robbery after 1977 and sentenced to serve less than 10 years in the penitentiary, and who was therefore not eligible for parole pursuant to § 47-7-3, was not subjected to enforcement of an ex post facto law by a policy of the Department of Corrections administratively barring him from earning good time after January, 1981, although good time earned prior to that date was not taken away, notwithstanding the provisions of § 47-5-139, since the statutory provisions regarding good time remained unchanged, and since administrative interpretation of a clearly worded statute is not a "law" within the scope and contemplation of the ex post facto clauses of the federal and state Constitutions. Tiller v. State, 440 So. 2d 1001 (Miss. 1983).

An administrative correction of a prior misinterpretation of parole laws is not a change in the law so as to violate the ex post facto clause of the United States or Mississippi Constitutions; even if the correction of a former mistaken interpretation of parole law did reach the level of a change in law, administrative decisions with regard to parole law eligibility are not "laws annexed to the crime when committed." Taylor v. Mississippi State Probation & Parole Bd., 365 So. 2d 621 (Miss. 1978).

6. Argument to, or consideration by, jury.

Prosecutor's statement in closing argument at sentencing phase of capital trial to effect that if defendant was sentenced to life imprisonment, he would be eligible for parole in 10 years, was accurate, thumbnail statement of Mississippi law, in spite of fact that it was obviously not full explanation of state's system of parole, and court refused to conclude that such remarks created unacceptable risk that jury would sentence defendant to death arbitrarily or capriciously. Gilliard v. Scroggy, 847 F.2d 1141 (5th Cir. 1988), cert. denied, 488 U.S. 1019, 109 S. Ct. 818, 102 L. Ed. 2d 807 (1989), reh'g denied, 489

U.S. 1061, 109 S. Ct. 1332, 103 L. Ed. 2d 600 (1989).

It is no more proper for a jury to concern itself with the wisdom of the legislative determination, pursuant to § 47-7-3(1), that persons sentenced to life imprisonment may under certain circumstances become eligible for parole, than it is for a jury to consider the legislature's determination that death in the gas chamber is an authorized punishment for capital murder. Williams v. State, 445 So. 2d 798 (Miss. 1984), cert. denied, 469 U.S. 1117, 105 S. Ct. 803, 83 L. Ed. 2d 795 (1985).

7. Jury instructions.

As defendant, on trial for capital murder, could be sentenced only to death or life imprisonment without the eligibility of parole, by instructing the jury that these were its only sentencing options, the trial judge properly gave the jury all the instructions that were needed. Brown v. State, 890 So. 2d 901 (Miss. 2004), writ of certiorari denied by 544 U.S. 981, 125 S. Ct. 1842, 161 L. Ed. 2d 735, 2005 U.S. LEXIS 3424, 73 U.S.L.W. 3620 (2005).

In defendant's capital murder conviction where defendant was sentenced to death, because Miss. Code Ann. § 47-7-3(1)(f) denied parole eligibility to any person charged, tried, convicted, and sentenced to life imprisonment under the provisions of Miss. Code Ann. § 99-19-101, the trial court did not err in not instructing the jury on life imprisonment with the possibility of parole. Branch v. State, 882 So. 2d 36 (Miss. 2004), writ of certiorari denied by 544 U.S. 907, 125 S. Ct. 1595, 161 L. Ed. 2d 282, 2005 U.S. LEXIS 2289, 73 U.S.L.W. 3530 (2005).

In a capital murder case, by giving only the sentencing options of death or life imprisonment without parole, the trial judge properly gave the jury all the instructions that were needed, as according to Miss. Code Ann. § 47-7-3(1)(f), there was no possibility of life imprisonment. Flowers v. State, 842 So. 2d 531 (Miss. 2003), remanded by 2006 Miss. LEXIS 356 (Miss. June 29, 2006).

8. Miscellaneous.

Trial court did not err in dismissing appellant's motion for post-conviction relief because no evidence was presented that appellant was misinformed during his sentencing hearing; under Miss. Code Ann. § 47-7-3(1)(h) (now § 47-7-3(1)(f)) appellant was not eligible for parole, and the trial court stated repeatedly at the sentencing hearing that the only sentence that could be imposed was life imprisonment. Collier v. State, 112 So. 3d 1088 (Miss. Ct. App. 2013).

Contrary to an inmate's assertions, the 2008 amendment of Miss. Code Ann. § 47-7-3(1)(g) (now § 47-7-3(1)(f)) did not provide the inmate with the possibility of being eligible for parole; the inmate had been convicted of armed robbery after October 1, 1994, and thus, he was ineligible for parole under § 47-7-3(1)(d)(ii) (now § 47-7-3(1)(c)(ii)) . Brown v. State, 54 So. 3d 882 (Miss. Ct. App. 2011).

Defendant's argument that it was error for the trial court to sentence him to life in prison without possibility of parole was improper; after the trial court set aside the jury's sentence of death, it had only one choice, which was the lesser sentence of life without the possibility of parole. Sentences that did not exceed the maximum term allowed by statute are not considered grossly disproportionate and are not disturbed on appeal. Maye v. State, 49 So. 3d 1140 (Miss. Ct. App. 2009), vacated by, remanded by 49 So. 3d 1124, 2010 Miss. LEXIS 622 (Miss. 2010).

Denial of appellant inmate's motion for post-conviction relief was appropriate because his indictment was not faulty for its failure to contain a provision for his eligibility for parole since it was not an essential element of the crime or had no effect on jurisdiction. His attorney was not ineffective for failing to object to a valid indictment. Bowling v. State, 12 So. 3d 607 (Miss. Ct. App. 2009).

Where appellant pled guilty to two counts of capital murder and two counts of armed robbery in 1979, he filed several motions for post-conviction relief; the circuit court did not err by dismissing his 2007 motion for post-conviction relief as a time-barred by the three-year statute of limitations set forth in Miss. Code Ann. § 99-39-5. Appellant's claim that double jeopardy barred prosecution of his armed robbery convictions was not good cause for an exception to the time-bar, because appellant delayed thirty years in attacking his armed robbery convictions until he became eligible for parole on his murder convictions in accordance with Miss. Code Ann. § 47-7-3(1) (1972). Rowland v. State, 42 So. 3d 545 (Miss. Ct. App. 2009), reversed by, remanded by 42 So. 3d 503, 2010 Miss. LEXIS 386 (Miss. 2010).

Defendant's life-imprisonment sentence after he was convicted of capital murder was neither cruel nor unusual under Miss. Code Ann. § 99-19-101(1) and Miss. Code Ann. § 47-7-3(1)(f) because the only possible sentence for conviction of capital murder committed after July 1, 1994, other than the death penalty, would have been life without parole; defendant's sentence under his conviction of capital murder not only fell within the prescribed statutory limits, but was the only sentence that could have been imposed. Anderson v. State, 5 So. 3d 1088 (Miss. Ct. App. 2007), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 171 (Miss. 2009), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 184 (Miss. 2009), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 177 (Miss. 2009).

Post-conviction relief was properly denied in an armed robbery case because a trial court correctly stated that, due to the nature of the charges, defendant was not eligible for parole, and he had to serve his entire 30 year sentence; defendant was not eligible under Miss. Code Ann. § 47-5-139 until the mandatory portion of his sentence had been served. Robinson v. State, 964 So. 2d 609 (Miss. Ct. App. 2007).

Motion for postconviction relief was properly dismissed without an evidentiary hearing in a case where a guilty plea was entered to the charge of burglary of an occupied dwelling because defendant offered no proof of what advice he was given about parole, other than the assertions made in the motion, and he was not eligible for such due to his conviction; also, defendant was told by a trial court that he was required to serve the full term of his sentence when he entered a guilty plea. Edge v. State, 962 So. 2d 81 (Miss. Ct. App. 2007).

Miss. Code Ann. § 47-7-3(1)(d)(ii) (now § 47-7-3(1)(c)(ii)) foreclosed armed robbers convicted after October 1, 1994, from parole eligibility, and defendant entered his guilty plea in February 2003, well after the date when Miss. Code Ann. § 47-7-3(1)(d)(ii) (now § 47-7-3(1)(c)(ii)) became applicable to persons convicted for armed robbery; thus, the trial judge properly informed defendant about his ineligibility for parole or early release. Gladney v. State, 963 So. 2d 1217 (Miss. Ct. App. 2007).

Due to the fact that defendant had pled guilty to charges relating to the sale of methamphetamine, he was not eligible for parole since that crime was excepted from Miss. Code Ann. § 47-7-3; therefore, a motion for post-conviction relief was properly denied. Heafner v. State, 947 So. 2d 354 (Miss. Ct. App. 2007).

Court denied petitioner's request for post-conviction relief from her conviction for capital murder based on her claim that she was improperly informed of the trial judge's sentencing options when she was deciding to waive a jury determination of her sentence and to place the decision in the hands of the trial judge because petitioner did not raise the issue on direct appeal and was procedurally barred under Miss. Code Ann. § 99-39-21(1), and she failed to show cause and actual prejudice by being informed that the trial judge had "three sentencing options" under the capital sentencing statute, Miss. Code Ann. § 99-19-101(1), in that it could have sentenced her to death, life imprisonment without eligibility for parole, or life imprisonment. In reality, the trial court had only two sentencing options, death or life imprisonment without parole eligibility, because the parole statute, Miss. Code Ann. § 47-7-3(1)(f), denies parole eligibility to any person charged, tried, convicted, and sentenced to life imprisonment under the provisions of Miss. Code Ann. § 99-19-101. Byrom v. State, 927 So. 2d 709 (Miss. 2006), writ of certiorari denied by 549 U.S. 1056, 127 S. Ct. 662, 166 L. Ed. 2d 520, 2006 U.S. LEXIS 9076, 75 U.S.L.W. 3283 (2006).

Inmate's petition for post-conviction relief was denied because the denial of the possibility of parole for an armed robbery conviction came from Miss. Code Ann. § 47-7-3(1)(d)(ii), not from a trial judge.

Hinton v. State, 947 So. 2d 979 (Miss. Ct. App. 2006), writ of certiorari denied by 947 So. 2d 960, 2007 Miss. LEXIS 94 (Miss. 2007).

Appellate court reversed the trial court's denial of inmate's petition for post-conviction relief as the record indicated that the trial court advised the inmate that he would be eligible for parole after 10 years, and under Miss. Code Ann. § 47-7-3(d)(ii), the inmate would not be eligible. Thus, the inmate was entitled to an evidentiary hearing on the matter. Garner v. State, — So. 2d —, 2005 Miss. App. LEXIS 695 (Miss. Ct. App. Sept. 27, 2005), opinion withdrawn by, substituted opinion at, remanded by 928 So. 2d 911, 2006 Miss. App. LEXIS 119 (Miss. Ct. App. 2006).

Trial court properly denied defendant's "motion to correct sentence" because applying Miss. Code Ann. § 47-5-138 to him was clearly impermissible under Miss. Code Ann. § 47-7-3, as he was an offender over 19 years of age and clearly ineligible for parole. Smith v. State, 914 So. 2d 330 (Miss. Ct. App. 2005).

Miss. Code Ann. § 47-7-3(g) provided that no person shall be eligible for parole who was convicted or whose suspended sentence was revoked after June 30, 1995; defendant was convicted of two sales of cocaine on December 3, 1996, such that he was plainly ineligible for parole release from the cocaine sales sentences pursuant to subsection (g), and any advice by counsel that defendant would have been eligible for parole if he pled guilty to the cocaine sales was erroneous. Thomas v. State, 881 So. 2d 912 (Miss. Ct. App. 2004).

Inmate's sentence after pleading guilty to a charge of armed robbery was proper where the record constituted sufficient evidence to show that the inmate was properly advised as to the minimum and maximum sentence prior to entering his plea; further, three years was the minimum sentence for armed robbery and a person convicted of armed robbery could not receive a wholly suspended sentence as the inmate alleged that his attorney told him. Mullins v. State, 859 So. 2d 1082 (Miss. Ct. App. 2003).

Amendment to the parole eligibility statute, Miss. Code Ann. § 47-7-3(1), created an ambiguity because the usual rule that an inmate must serve one fourth of the sentence before parole eligibility can be modified if the prisoner was sentenced to a term of 30 years or more, or life, but the 10-year minimum appeared to only apply to life sentences; it was clear the Legislature intended the 10-year minimum sentence to apply to sentences of 30 years or more and that defendant was not entitled to a correction to his parole eligibility date. Lattimore v. Sparkman, 858 So. 2d 936 (Miss. Ct. App. 2003).

Defendant argued that his attorney had erroneously told him he would only have to serve 25 percent of his sentence and that the plea agreement was a good one; however, defendant could not decide which percentage of his sentence he believed he had to serve and defendant's claim was time barred; once a prisoners' effective assistance of counsel claims were time barred, they had to fall within one of the enumerated exceptions to remain viable. Austin v. State, 863 So. 2d 59 (Miss. Ct. App. 2003).

Trial court erred by stating (in its sentencing order that defendant was to serve his sentence "without the benefit of parole or probation" pursuant to Miss. Code Ann. § 47-7-3, which prohibited granting parole to persons convicted of a crime after June 30, 1995, since § 47-7-3(1)(g) was a mandate to the parole board and not to the courts; inclusion of this language was surplusage, but defendant was not entitled to any relief, since the sentence was not illegal. Norwood v. State, 846 So. 2d 1048 (Miss. Ct. App. 2003).

Defendant's supported allegations that his guilty plea to murdering his girlfriend was involuntary and the result of coercion because his attorney refused to investigate an allegedly incorrect criminal record that would have shown defendant to be a habitual criminal could properly be rejected by the trial court considering defendant's motion for post-conviction relief without holding an evidentiary hearing; trial court could properly impose a life sentence without referring the matter to a jury. Riley v. State, 848 So. 2d 888 (Miss. Ct. App. 2003).

Other than first-time offenders convicted of nonviolent crimes, defendants were ineligible for parole; defendant was an habitual offender and had committed violent crimes, and whether or not he was an habitual offender was of no importance to the validity of the sentence because habitual offender status was but one route to a prison term without possibility of parole. Booker v. Bailey, 839 So. 2d 611 (Miss. Ct. App. 2003).

Because defendant was a juvenile and the death penalty was unavailable, the circuit court sentenced him to the only sentence currently available for capital murder, life imprisonment without parole. Horne v. State, 825 So. 2d 627 (Miss. 2002).

Language in sentencing order that defendant was to serve his sentence without hope of parole or probation was stricken as surplusage on appeal since the administration of parole for the defendant was governed by statute. Norwood v. State, — So. 2d —, 2001 Miss. App. LEXIS 489 (Miss. Ct. App. Nov. 27, 2001), opinion withdrawn by, substituted opinion at 846 So. 2d 1048, 2003 Miss. App. LEXIS 472 (Miss. Ct. App. 2003).

Whether defendant was classified as an accessory before the fact or an aider and abettor to the gunman was irrelevant where his role was tantamount to that of the principal; therefore, there was no error in the sentence that was given based on his guilty plea for murder. Walton v. State, 752 So. 2d 452 (Miss. Ct. App. 1999).

A post-conviction relief petitioner was entitled to an evidentiary hearing on the voluntariness of his guilty plea where the transcripts of the petitioner's change of plea hearing and sentencing hearing indicated that the assistant district attorney, the defendant's attorney, and the trial judge were confused or misinformed as to § 47-7-3, under which the defendant was pleading guilty, and consequently the defendant was not properly advised of the mandatory minimum sentence he would have to serve before becoming eligible for parole. Washington v. State, 620 So. 2d 966 (Miss. 1993).

A defendant who was convicted of armed robbery was entitled to an evidentiary hearing pursuant to §§ 99-39-13 through 99-39-23 on the issue of whether he was afforded ineffective assistance of counsel during the plea process, where the defendant alleged that his attorney erroneously informed him that if he accepted the prosecution's plea bargain offer of 15 years imprisonment he would be eligible for parole after serving 3 years and 9 months of his sentence, and that he would not have accepted the prosecution's plea bargain offer had he known that he would be ineligible for parole for 10 years pursuant to § 47-7-3(1)(d), which provides that a person convicted of robbery and sentenced to more than 10 years imprisonment shall not be eligible for parole until after serving at least 10 years of the sentence. Alexander v. State, 605 So. 2d 1170 (Miss. 1992).

Where it appeared that the trial court, in sentencing a 16-year-old defendant convicted of armed robbery to a term of 14 years in state prison, had been under the misapprehension that §§ 97-3-79 and 47-7-3, read together, mandated a sentence of at least 10 years in the state penitentiary, absent a jury verdict of life imprisonment, the case would be remanded to the court for a clarification of the sentencing since there was no way to ascertain whether the trial court had considered the statutory alternative for sentencing minor offenders under the provisions of § 43-21-159(3). Bougon v. State, 405 So. 2d 101 (Miss. 1981).

In a prosecution for armed robbery, a sentence of 12 years in prison, without eligibility of parole for 10 years, imposed upon a 14-year-old mentally retarded defendant did not constitute cruel and unusual punishment; however, the case would be remanded to the trial court for consideration of alternative sentencing under § 43-21-159 where the trial judge should have placed in the record the sources and facts of his sentence study and should have permitted the defendant's attorney to introduce evidence of the presence or absence of facilities at the Mississippi State Penitentiary for the care of the defendant, and the availability of other institutions or facilities which could be utilized by the defendant. May v. State, 398 So. 2d 1331 (Miss. 1981).

In a prosecution for armed robbery, the defendant's contention that his sentence of 30 years imprisonment without parole was unconstitutional became moot with the passage of § 47-7-3(d) which provides that persons who have been convicted of armed robbery would be eligible for parole after serving 10 years. Bankston v. State, 391 So. 2d 1005 (Miss. 1980).

9. Ineffective assistance of counsel.

Inmate did not receive ineffective assistance of counsel as: (1) the plea petition, the guilty-plea colloquy, and the post-conviction relief evidentiary hearing, taken together, reflected that defense counsel correctly advised the inmate of the life sentence for murder, his potential for release at age 65, and the correct sentencing statutory provision, Miss. Code Ann. § 47-7-3(1)(f), which prohibited parole eligibility because the inmate pled guilty to murder and was sentenced to life imprisonment; (2) the inmate had the potential for release Miss. Code Ann. § 47-5-139(1)(a) at age 65 after serving 15 years by petitioning for early release at or after age 65; (3) the inmate was 36 years old at the time of his guilty plea and sentence; (4) upon reaching age 65, the inmate would have served substantially more than 15 years; and (5) the inmate admitted being advised of his eligibility to be released at age 65. Higginbotham v. State, 114 So. 3d 9 (Miss. Ct. App. 2012), writ of certiorari denied by 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

10. Sex offenders.

Defendant's sentence of thirty-five years in prison, with thirty years to serve and five years suspended, followed by five years' supervised probation, without the possibility of parole, was permissible under Miss. Code Ann. § 47-7-3(1)(b), although Miss. Code Ann. § 97-3-101(3) did not expressly authorize day-for-day sentences and parole restrictions. Petty v. State, 118 So. 3d 659 (Miss. Ct. App. 2013).

ATTORNEY GENERAL OPINIONS

Simple assault on a police officer is not excluded for parole eligibility under the statute. Johnson, Sept. 19, 2001, A.G. Op. #01-0545.

An inmate with a pre-1995 parole-eligible sentence retains his parole eligibility on that sentence if he is subsequently convicted of another crime after June 30, 1995. Epps, Mar. 21, 2003, A.G. Op. #03-0107.

An offender who has been convicted of a nonviolent offense and who has had a previous felony charge expunged under § 41-29-150(d)(2) may qualify as a first offender for parole eligibility purposes under subsection (g) of this section. Epps, Nov. 7, 2003, A.G. Op. 03-0589.

If a defendant is convicted of an offense for which he would normally be eligible for parole, but prior to being sentenced for that first offense he is convicted of a separate felony, he is no longer considered a first offender and eligible for parole. Taylor, Aug. 27, 2004, A.G. Op. 04-0393.

Unless required by federal law or federal desegregation order, a school board who orders the superintendent to reassign teachers based upon racial ratios would substantially encroach on the prerogatives clearly delegated by statute to the superintendent. Rhodes, Apr. 28, 2006, A.G. Op. 06-0133.

RESEARCH REFERENCES

ALR. Propriety of conditioning probation or suspended sentence on defendant's refraining from political activity, protest, or the like. 45 A.L.R.3d 1022.

State court's power to place defendant on probation without imposition of sentence. 56 A.L.R.3d 932.

Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution. 73 A.L.R.3d 1240.

Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim. 79 A.L.R.3d 976.

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs. 79 A.L.R.3d 1025.

Propriety of conditioning probation upon defendant's posting of bond guaranteeing compliance with terms of probation. 79 A.L.R.3d 1068.

Validity of requirement that, as condition of probation, defendant submit to warrantless searches. 79 A.L.R.3d 1083.

Validity of statutes prohibiting or restricting parole, probation, or suspension of sentence in cases of violent crimes. 100 A.L.R.3d 431.

Governmental tort liability for injuries caused by negligently released individual. 6 A.L.R.4th 1155.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 A.L.R.4th 722.

Defendant's Right to Credit for Time Spent in Halfway House, Rehabilitation Center, or Similar Restrictive Environment as Condition of Pretrial Release. 46 A.L.R.6th 63.

Sufficiency, under 18 USCS § 4206(b) or (c), of statement by United States Parole Commission of reasons for denying parole. 58 A.L.R. Fed. 147.

Information consideration by United States Parole Commission in making determinations relating to release on parole under § 2 of Parole Commission and Reorganization Act (18 USCS §§ 4201 et seq). 58 A.L.R. Fed. 911.

Validity, construction, and application of Anti-Car Theft Act (18 USCS § 2119). 140 A.L.R. Fed. 249.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 82, 83, 90, 99, 107, 111.

22 Am. Jur. Trials 1, Prisoners' Rights Litigation.

Law Reviews. 1989 Mississippi Supreme Court Review: Statutory Interpretation. 59 Miss. L. J. 876, Winter, 1989.

§ 47-7-3.1. Case plan for parole-eligible inmates; purpose; components.

(1) In consultation with the Parole Board, the department shall develop a case plan for all parole eligible inmates to guide an inmate's rehabilitation while in the department's custody and to reduce the likelihood of recidivism after release.

(2) Within ninety (90) days of admission, the department shall complete a case plan on all inmates which shall include, but not limited to:

(a) Programming and treatment requirements based on the results of a risk and needs assessment;

(b) Any programming or treatment requirements contained in the sentencing order; and

(c) General behavior requirements in accordance with the rules and policies of the department.

(3) The department shall provide the inmate with a written copy of the case plan and the inmate's caseworker shall explain the conditions set forth in the case plan.

(a) Within ninety (90) days of admission, the caseworker shall notify the inmate of their parole eligibility date as calculated in accordance with Section 47-7-3(3);

(b) At the time a parole-eligible inmate receives the case plan, the department shall send the case plan to the Parole Board for approval.

(4) The department shall ensure that the case plan is achievable prior to inmate's parole eligibility date.

(5) The caseworker shall meet with the inmate every eight (8) weeks from the date the offender received the case plan to review the inmate's case plan progress.

(6) Every four (4) months the department shall electronically submit a progress report on each parole-eligible inmate's case plan to the Parole Board. The board may meet to review an inmate's case plan and may provide written input to the caseworker on the inmate's progress toward completion of the case plan.

(7) The Parole Board shall provide semiannually to the Oversight Task Force the number of parole hearings held, the number of prisoners released to parole without a hearing and the number of parolees released after a hearing.

SOURCES: Laws, 2014, ch. 457, § 43, eff from and after July 1, 2014.

Cross References — Oversight Task Force, see § 47-5-6.
Case plan for parole-eligible inmates, see § 47-7-3.1.

§ 47-7-3.2. Minimum time offenders convicted of crime of violence must serve before release; minimum percentage of other sentences offenders must serve before release.

(1) Notwithstanding Sections 47-5-138, 47-5-139, 47-5-138.1 or 47-5-142, no person convicted of a criminal offense on or after July 1, 2014, shall be released by the department until he or she has served no less than fifty percent (50%) of a sentence for a crime of violence pursuant to Section 97-3-2 or twenty-five percent (25%) of any other sentence imposed by the court.

(2) This section shall not apply to:

(a) Offenders sentenced to life imprisonment;

(b) Offenders convicted as habitual offenders pursuant to Sections 99-19-81 through 99-19-87;

(c) Offenders serving a sentence for a sex offense; or

(d) Offenders serving a sentence for trafficking pursuant to Section 41-29-139(f).

SOURCES: Laws, 2014, ch. 457, § 42, eff from and after July 1, 2014.

§ 47-7-4. Conditional medical release of prisoners; criteria; supervision; revocation.

The commissioner and the medical director of the department may place an offender who has served not less than one (1) year of his or her sentence, except an offender convicted of a sex crime, on conditional medical release. However, a nonviolent offender who is bedridden may be placed on conditional medical release regardless of the time served on his or her sentence. Upon the release of a nonviolent offender who is bedridden, the state shall not be responsible or liable for any medical costs that may be incurred if such costs are acquired after the offender is no longer incarcerated due to his or her placement on conditional medical release. The commissioner shall not place an offender on conditional medical release unless the medical director of the department certifies to the commissioner that (a) the offender is suffering from a significant permanent physical medical condition with no possibility of recovery; (b) that his or her further incarceration will serve no rehabilitative purposes; and (c) that the state would incur unreasonable expenses as a result of his or her continued incarceration. Any offender placed on conditional medical release shall be supervised by the Division of Community Corrections of the department for the remainder of his or her sentence. An offender's conditional medical release may be revoked and the offender returned and placed in actual custody of the department if the offender violates an order or condition of his or her conditional medical release. An offender who is no longer bedridden shall be returned and placed in the actual custody of the department.

SOURCES: Laws, 2004, ch. 426, § 1; Laws, 2008, ch. 365, § 1; Laws, 2012, ch. 545, § 1, eff from and after passage (approved May 22, 2012.)

Editor's Note — [Laws, 1994, ch. 606, § 1; Laws, 1994, 1st Ex Sess, ch. 26, § 25; Laws, 1996, ch. 509, § 1; Laws, 1997, ch. 387, § 1]

A former § 47-7-4 was repealed by its own terms by Laws of 1997, ch. 387, § 1, eff from and after July 1, 1998.

Former § 47-7-4 related to medical release for certain offenders.

§ 47-7-5. State Parole Board created; membership; requirements; vacancies; expenses; immunity; budget; responsibilities to offenders; electronic monitoring program; central registry of paroled inmates; minimum vote required to grant parole to inmate convicted of capital murder or sex crime [Repealed effective July 1, 2018].

(1) The State Parole Board, created under former Section 47-7-5, is hereby created, continued and reconstituted and shall be composed of five (5) members. The Governor shall appoint the members with the advice and consent of the Senate. All terms shall be at the will and pleasure of the Governor. Any vacancy shall be filled by the Governor, with the advice and consent of the Senate. The Governor shall appoint a chairman of the board.

(2) Any person who is appointed to serve on the board shall possess at least a bachelor's degree or a high school diploma and four (4) years' work experience. Each member shall devote his full time to the duties of his office and shall not engage in any other business or profession or hold any other public office. A member shall not receive compensation or per diem in addition to his salary as prohibited under Section 25-3-38. Each member shall keep such hours and workdays as required of full-time state employees under Section 25-1-98. Individuals shall be appointed to serve on the board without reference to their political affiliations. Each board member, including the chairman, may be reimbursed for actual and necessary expenses as authorized by Section 25-3-41. Each member of the board shall complete annual training developed based on guidance from the National Institute of Corrections, the

Association of Paroling Authorities International, or the American Probation and Parole Association. Each first-time appointee of the board shall, within sixty (60) days of appointment, or as soon as practical, complete training for first-time Parole Board members developed in consideration of information from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association.

(3) The board shall have exclusive responsibility for the granting of parole as provided by Sections 47-7-3 and 47-7-17 and shall have exclusive authority for revocation of the same. The board shall have exclusive responsibility for investigating clemency recommendations upon request of the Governor.

(4) The board, its members and staff, shall be immune from civil liability for any official acts taken in good faith and in exercise of the board's legitimate governmental authority.

(5) The budget of the board shall be funded through a separate line item within the general appropriation bill for the support and maintenance of the department. Employees of the department which are employed by or assigned to the board shall work under the guidance and supervision of the board. There shall be an executive secretary to the board who shall be responsible for all administrative and general accounting duties related to the board. The executive secretary shall keep and preserve all records and papers pertaining to the board.

(6) The board shall have no authority or responsibility for supervision of offenders granted a release for any reason, including, but not limited to, probation, parole or executive clemency or other offenders requiring the same through interstate compact agreements. The supervision shall be provided exclusively by the staff of the Division of Community Corrections of the department.

(7)(a) The Parole Board is authorized to select and place offenders in an electronic monitoring program under the conditions and criteria imposed by the Parole Board. The conditions, restrictions and requirements of Section 47-7-17 and Sections 47-5-1001 through 47-5-1015 shall apply to the Parole Board and any offender placed in an electronic monitoring program by the Parole Board.

(b) Any offender placed in an electronic monitoring program under this subsection shall pay the program fee provided in Section 47-5-1013. The program fees shall be deposited in the special fund created in Section 47-5-1007.

(c) The department shall have absolute immunity from liability for any injury resulting from a determination by the Parole Board that an offender be placed in an electronic monitoring program.

(8)(a) The Parole Board shall maintain a central registry of paroled inmates. The Parole Board shall place the following information on the registry: name, address, photograph, crime for which paroled, the date of the end of parole or flat-time date and other information deemed necessary. The Parole Board shall immediately remove information on a parolee at the end of his parole or flat-time date.

(b) When a person is placed on parole, the Parole Board shall inform the parolee of the duty to report to the parole officer any change in address ten (10) days before changing address.

(c) The Parole Board shall utilize an Internet website or other electronic means to release or publish the information.

(d) Records maintained on the registry shall be open to law enforcement agencies and the public and shall be available no later than July 1, 2003.

(9) An affirmative vote of at least four (4) members of the Parole Board shall be required to grant parole to an inmate convicted of capital murder or a sex crime.

(10) This section shall stand repealed on July 1, 2018.

SOURCES: Codes, 1942, § 4004-01; Laws, 1942, ch. 283; Laws, 1944, ch. 334, § 3; Laws, 1950, ch. 524, §§ 2, 3; Laws, 1956, ch. 262, § 2; Laws, 1960, ch. 272; Laws, 1968, ch. 362, § 1; Laws, 1976, ch. 440, § 80; Laws, 1978, ch. 520, § 13; Laws, 1980, ch. 560, § 21; reenacted, Laws, 1981, ch. 465, § 93; reenacted, Laws, 1984, ch. 471, § 103; reenacted, Laws, 1986, ch. 413, § 103; Laws, 1989, 1st Ex Sess, ch. 3, § 1; Laws, 1992, ch. 346, § 1; Laws, 1993, ch. 575, § 1; reenacted and amended, Laws, 1994 Ex Sess, ch. 25, § 1; amended, Laws, 1995, ch. 596, § 1; Laws, 1997, ch. 602, § 2; Laws, 2000, ch. 612, § 1; Laws, 2002, ch. 560, § 1; Laws, 2004, ch. 569, § 2; Laws, 2005, ch. 485, § 1; Laws, 2006, ch. 570, § 1; Laws, 2007, ch. 597, § 1; Laws, 2009, ch. 513, § 1; Laws, 2012, ch. 320, § 1; Laws, 2014, ch. 457, § 52, eff from and after July 1, 2014.

Editor's Note — Laws of 1994, 1st Ex Sess, ch. 25, § 8, provides as follows:

"SECTION 8. The State Parole Board created by Section 1 of this act is a continuation of the State Parole Board that existed on June 30, 1994. Executive Order 754, issued June 24, 1994, shall have no force or effect from and after the effective date of this act, and the State Parole Board created by Section 1 of this act supersedes the entity referred to in Executive Order 754 in all respects after the effective date of this act; however, all actions taken by the entity referred to in Executive Order 754 between June 30, 1994, and the effective date of this act that would have been lawful if they had been taken by the State Parole Board as it existed on June 30, 1994, pursuant to the board's powers or duties as they existed on June 30, 1994, or pursuant to any powers or duties of the board provided for by any state law enacted during the 1994 Regular Session or any federal law or regulation that was in effect between June 30, 1994, and the effective date of this act, are retroactively ratified, confirmed and validated. In addition, all actions taken by the State Fiscal Officer, the State Treasurer and their respective employees between June 30, 1994, and the effective date of this act in connection with the expenditure by the entity referred to in Executive Order 754 of any of the funds appropriated to the Department of Corrections by Senate Bill 3253, 1994 Regular Session, are retroactively ratified, confirmed and validated. Nothing in this section shall be construed as ratifying any authority of the Governor to establish a state agency by Executive Order."

Laws of 2005, ch. 485, § 11 provides as follows:

"SECTION 11. The intensive supervision program established in Laws of 2005, Chapter 485 is a continuation of the intensive supervision program that existed on June 30, 2004. All actions taken by the Department of Corrections from July 1, 2004, to April 6, 2005, which would have been authorized under the prior intensive supervision program are ratified, confirmed and validated."

Amendment Notes — The 2014 amendment added two additional sentences at the end of (2); and extended the repealer provision from "July 1, 2014" to "July 1, 2018" in (10).

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

For provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

Division of community services generally, see § 47-5-8.

JUDICIAL DECISIONS

1. In general.

Trial court did not err in dismissing an inmate's complaint against the State seeking an interpretation of Miss. Code Ann. §§ 47-7-3 and 47-7-5 and claiming that the statutes were unconstitutional because he trial court lacked jurisdiction to consider the inmate's claims; the inmate's concerns failed to state a constitutional claim sufficient for the trial court to assert jurisdiction, and the Parole Board was in compliance with Miss. Code Ann. § 47-7-5, Rochell v. State, 36 So. 3d 479 (Miss. Ct. App. 2010).

Both defendant and the Mississippi Attorney General's Office agreed that defendant's parole and release dates were incorrectly calculated in regard to the date his sentence began, and as to credits and trusty time. Thus, the appellate court reversed the determination that defendant was not entitled to a hearing and remanded the matter to the Mississippi Parole Board to allow the Board to make the exact calculations of defendant's parole and release dates; however, on remand, the Board was free to grant or deny defendant's petition for parole and the circuit court had no authority to determine defendant's parole eligibility. Lizana v. Scott, 910 So. 2d 31 (Miss. Ct. App. 2005).

An agreement between a capital murder defendant and the State for the imposition of a sentence of life imprisonment without the possibility of parole was void and unenforceable on public policy grounds where the defendant was not an habitual offender, since a sentence of life imprisonment without the possibility of parole is not an option unless the defendant is adjudged an habitual offender; the agreement was an attempt to circumvent § 99-19-101, which only authorizes a sentence of life imprisonment or death for capital murder, and its enforcement by the court would bind the parole board, which would effect judicial encroachment on an executive function. Lanier v. State, 635 So. 2d 813 (Miss. 1994).

Parole board members who voted to parole a prisoner to Friends of Alcoholics (FOA) were not liable to a person who was injured by the parolee after he left FOA without leave; the parole board members did not lose their qualified immunity, either by failure to perform their ministerial functions or by acting with reckless disregard in voting to parole the parolee to FOA, where pertinent information regarding the parolee was contained in his parole file and the master file which were reviewed by the parole board when the case was considered. The board members substantially complied with the duties and requirements set forth in the statute for members of the parole board, particularly § 47-7-17 and there was no violation of their ministerial duties. Additionally, although the board members were lay persons, untrained, unschooled, and inexperienced in the complex and sensitive problems of probation and parole, and even though judgment and decision was deficient and lacking, they were exercising discretionary authority; their decision was the result of personal deliberation and judgment, and they did not commit willful wrongs or malicious acts. Furthermore, they did not act with reckless disregard and did not exceed and pervert their discretionary authority-theirs was an exercise of poor judgment. As a result of this case, the legislature enacted a law providing for a full time parole board with members who are salaried employees of the State, and providing that the parole board members shall be immune from civil liability for any official acts taken in good faith and in exercise of the board's legitimate governmental authority. Sykes v. Grantham, 567 So. 2d 200 (Miss. 1990).

The Department of Corrections has no duty to provide the Parole Board with information and has no control over parole decisions. Thus, the department had no duty to a victim assaulted by a paroled prisoner. Grantham v. Mississippi Dep't of Cors., 522 So. 2d 219 (Miss. 1988).

ATTORNEY GENERAL OPINIONS

Actual and necessary expenses do not include travel between one's home and office where one normally works. Hughes, May 22, 1991, A.G. Op. #91-0375.

A member of the Parole Board may conduct worship service on Sunday mornings and teach bible class on Wednesday nights in addition to his duties as a member of the Parole Board, but may not receive compensation therefore. Naylor, April 16, 1999, A.G. Op. #99-0168.

The State Parole Board has no authority to parole an offender under subsection (8) who is suffering from a terminal illness but has not served sufficient prison time to be eligible for parole. Pope, Feb. 13, 2001, A.G. Op. #2001-0033.

The State Parole Board has no authority to parole an offender under subsection (8) who is suffering from a terminal illness but is sentenced under a law such as "Truth in Sentencing" which does not provide for a parole. Pope, Feb. 13, 2001, A.G. Op. #2001-0033.

RESEARCH REFERENCES

Am Jur. 59 Am. Jur. 2d, Pardon and Parole § 76.

CJS. 67A C.J.S., Pardon and Parole §§ 46-48.

§ 47-7-6. Parole Board to collect certain information and report semiannually to Oversight Task Force.

(1) The Parole Board, with the assistance of the Department of Corrections, shall collect the following information:

(a) The number of offenders supervised on parole;

(b) The number of offenders released on parole;

(c) The number of parole hearings held;

(d) The parole grant rate for parolees released with and without a hearing;

(e) The average length of time offenders spend on parole;

(f) The number and percentage of parolees revoked for a technical violation and returned for a term of imprisonment in a technical violation center;

(g) The number and percentage of parolees revoked for a technical violation and returned for a term of imprisonment in another type of Department of Corrections' facility;

(h) The number and percentage of parolees who are convicted of a new offense and returned for a term of imprisonment on their current crime as well as the new crime;

(i) The number of parolees held on a violation in county jail awaiting a revocation hearing; and

(j) The average length of stay in a county jail for parolees awaiting a revocation hearing.

(2) The Parole Board shall semiannually report information required in subsection (1) to the Oversight Task Force, and upon request, shall report such information to the PEER Committee.

SOURCES: Laws, 2014, ch. 457, § 67, effective from and after July 1, 2014.

Editor's Note — A former § 47-7-6 provided that an individual was ineligible for an appointment by the governor to the State Parole Board if that individual contributed more than a certain amount to the campaign of the appointing governor.

A former § 47-7-6. (Laws, 1989, 1st Ex Sess, ch. 3, § 2, eff from and after May 1, 1989; Repealed by Laws of 2008, ch. 438, § 2, effective from and after passage April 7, 2008).

§ 47-7-7. Repealed.

Repealed by Laws of 1976, ch. 440, § 922, eff from and after July 1, 1976.

[Laws, 1944, ch. 334, § 12; Laws, 1950, ch. 524; § 6; Laws, 1956, ch. 262, § 3; Laws, 1958, ch. 239; Laws, 1960, ch. 274; Laws, 1964, ch. 367; Laws, 1968, ch. 363, § 1; Laws, 1973, ch. 377, § 1]

Editor's Note — Former § 47-7-7 required the state probation and parole board to appoint an administrative assistant, in turn to appoint, subject to board approval, probation and parole officers and other employees; provided for examinations; and fixed the total number of employees and probation and parole officers.

§ 47-7-9. General powers and duties of personnel of Division of Community Corrections as field supervisors and presentence investigators.

(1) The circuit judges and county judges in the districts to which Division of Community Corrections personnel have been assigned shall have the power to request of the department transfer or removal of the division personnel from their court.

(2)(a) Division personnel shall investigate all cases referred to them for investigation by the board, the division or by any court in which they are authorized to serve. They shall furnish to each person released under their supervision a written statement of the conditions of probation, parole, earned-release supervision, post-release supervision or suspension and shall instruct the person regarding the same. They shall administer a risk and needs assessment on each person under their supervision to measure criminal risk factors and individual needs. They shall use the results of the risk and needs assessment to guide supervision responses consistent with evidence-based practices as to the level of supervision and the practices used to reduce recidivism. They shall develop a supervision plan for each person assessed as moderate to high risk to reoffend. They shall keep informed concerning the conduct and conditions of persons under their supervision and use all suitable methods that are consistent with evidence-based practices to aid and encourage them and to bring about improvements in their conduct and condition and to reduce the risk of recidivism. They shall keep detailed records of their work and shall make such reports in writing as the court or the board may require.

(b) Division personnel shall complete annual training on evidence-based practices and criminal risk factors, as well as instructions on how to target these factors to reduce recidivism.

(c) The division personnel duly assigned to court districts are hereby vested with all the powers of police officers or sheriffs to make arrests or perform any other duties required of policemen or sheriffs which may be incident to the division personnel responsibilities. All probation and parole officers hired on or after July 1, 1994, will be placed in the Law Enforcement Officers Training Program and will be required to meet the standards outlined by that program.

(d) It is the intention of the Legislature that insofar as practicable the case load of each division personnel supervising offenders in the community (hereinafter field supervisor) shall not exceed the number of cases that may be adequately handled.

(3)(a) Division personnel shall be provided to perform investigation for the court as provided in this subsection. Division personnel shall conduct presentence investigations on all persons convicted of a felony in any circuit court of the state, prior to sentencing and at the request of the circuit court judge of the court of conviction. The presentence evaluation report shall consist of a complete record of the offender's criminal history, educational level, employment history, psychological condition and such other information as the department or judge may deem necessary. Division personnel shall also prepare written victim impact statements at the request of the sentencing judge as provided in Section 99-19-157.

(b) In order that offenders in the custody of the department on July 1, 1976, may benefit from the kind of evaluations authorized in this section, an evaluation report to consist of the information required hereinabove, supplemented by an examination of an offender's record while in custody, shall be compiled by the division upon all offenders in the custody of the department on July 1, 1976. After a study of such reports by the State Parole Board those cases which the board believes would merit some type of executive clemency shall be submitted by the board to the Governor with its recommendation for the appropriate executive action.

(c) The department is authorized to accept gifts, grants and subsidies to conduct this activity.

SOURCES: Codes, 1942, § 4004-09; Laws, 1944, ch. 334, § 7; Laws, 1950, ch. 524, § 10; Laws, 1954, Ex. ch. 23, § 1; Laws, 1956, ch. 262, § 4; Laws, 1976, ch. 440, § 81; reenacted, Laws, 1981, ch. 465, § 94; reenacted, Laws, 1984, ch. 471, § 104; reenacted, Laws, 1986, ch. 413, § 104; Laws, 1987, ch. 433, § 7; Laws, 1994, ch. 516, § 1; Laws, 1995, ch. 596, § 6; Laws, 2002, ch. 624, § 5; Laws, 2014, ch. 457, § 53, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (2)(a), substituted "the person" for "him" at the end of the second sentence; added the third, fourth, and fifth sentences; and inserted "that are consistent with evidence-based practices" and "and to reduce the risk of recidivism" to the second from last sentence; added (2)(b) and redesignated the remaining subsections accordingly.

Cross References — Right of presentence investigators to inspect certain youth court records, see § 43-21-261.

Division of community services generally, see § 47-5-8.

Condition of probation by order of court upon suspended sentence, see §§ 47-7-33 et seq.

Out-of-state parolee supervision, see § 47-7-71.

Duty of department of corrections, division of community services to support pretrial intervention program (§§ 99-15-101 through 99-15-127), see § 99-15-127.

JUDICIAL DECISIONS

1. In general.

Petition for postconviction relief was denied because there was no error in the mention of the conspiracy charges during sentencing when the state requested their retirement to the file; there was no indication that the conspiracy charges, which were not included in a pre-sentence report, were considered as aggravating factors. Moody v. State, 964 So. 2d 564 (Miss. Ct. App. 2007).

Defendant's convictions for armed robbery and arson were proper where the failure to grant a sentencing hearing was not in error because the trial judge was already privy to the facts of the case and the aggravating and mitigating circumstances prior to sentencing, Miss. Code Ann. § 47-7-9(3)(a). Payton v. State, 897 So. 2d 921 (Miss. 2003).

In a prosecution for possession of cocaine with intent to distribute, the trial court did not err in failing to order a presentence report, thus prohibiting the defendant from offering mitigating circumstances for the court's consideration prior to imposition of sentence, since presentence investigations and reports are discretionary with the trial judge and not mandatory. Edwards v. State, 615 So. 2d 590 (Miss. 1993).

The use of presentence investigations and reports, as provided in § 47-7-9(3)(a), are discretionary with the trial judge and are not mandatory; a defendant does not have a right to a presentence investigation. Roberson v. State, 595 So. 2d 1310 (Miss. 1992).

Failure to request pre-sentence report is not ineffective assistance of counsel because defendant is not automatically entitled to pre-sentence reports under § 47-7-9(3)(a), which clearly states that pre-sentence reports are given only at discretion of circuit judge. Stringer v. Scroggy, 675 F. Supp. 356 (S.D. Miss. 1987), aff'd, 862 F.2d 1108 (5th Cir. 1988), reh'g denied, 866 F.2d 1417 (5th Cir. 1989), vacated, 494 U.S. 1074, 110 S. Ct. 1800, 108 L. Ed. 2d 931 (1990), on remand, 909 F.2d 111 (5th Cir. 1990), vacated on other grounds, 979 F.2d 38 (5th Cir. 1992).

A presentence report under § 47-7-9(3)(a) is required only when the circuit judge requests it, and there is no reason to order such a report in a capital case in which the jury imposes the sentence and both the state and the defendant are entitled to present evidence. Johnson v. Thigpen, 449 So. 2d 1207 (Miss. 1984).

In a prosecution for murder while engaged in the offense of kidnapping, the trial court did not commit reversible error by sentencing the defendant to death without a pre-sentence report where the sentencing jury had decided the issue of sentence after a full hearing on the issues of mitigating and aggravating circumstances. In re Jordan, 390 So. 2d 584 (Miss. 1980).

RESEARCH REFERENCES

ALR. Probation officer's liability for negligent supervision of probationer. 44 A.L.R.4th 638.

Right of convicted defendant or prosecution to receive updated presentence report at sentence proceedings. 22 A.L.R.5th 660.

§ 47-7-11. Salaries, per diem and expenses.

All salaries and expenses incurred in the carrying out of this chapter shall be paid out of funds appropriated by the legislature for the support and maintenance of the probation and parole board. All accounts, including salaries, shall be approved and allowed by the board, and the board shall keep a complete record thereof.

SOURCES: Codes, 1942, § 4004-19; Laws, 1944, ch. 334, § 16; Laws, 1950, ch. 524, § 20; Laws, 1956, ch. 262, § 9; brought forward, Laws, 1981, ch. 465, § 95; reenacted, Laws, 1984, ch. 471, § 105; reenacted, Laws, 1986, ch. 413, § 105, eff from and after passage (approved March 28, 1986).

§ 47-7-13. Voting and recordkeeping requirements; offices, equipment, and supplies.

A majority of the board shall constitute a quorum for the transaction of all business. A decision to parole an offender convicted of murder or a sex-related crime shall require the affirmative vote of three (3) members. The board shall maintain, in minute book form, a copy of each of its official actions with the reasons therefor. Suitable and sufficient office space and support resources and staff necessary to conducting Parole Board business shall be provided by the Department of Corrections. However, the principal place for conducting parole hearings shall be the state penitentiary at Parchman.

SOURCES: Codes, 1942, § 4004-06; Laws, 1942, ch. 283; Laws, 1944, ch. 334, § 4; Laws, 1950, ch. 524, § 7; brought forward, Laws, 1981, ch. 465, § 96; reenacted, Laws, 1984, ch. 471, § 106; reenacted, Laws, 1986, ch. 413, § 106; Laws, 1986, ch. 435, § 2; Laws, 1989, 1st Ex Sess, ch. 3, § 5, eff from and after May 1, 1989.

Cross References — Exemption of probation and parole board from provisions of open meetings law, see § 25-41-3.

Inapplicability of Mississippi Rules of Evidence in proceedings to grant or revoke probation, see Miss. R. Evid. 1101.

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The provisions of Section 47-7-13 regarding the necessary votes to parole offenders convicted of murder do not apply to offenders convicted of manslaughter. Mosley, July 31, 1995, A.G. Op. #95-0504.

Until the Legislature addresses Section 47-7-13, an affirmative unanimous vote is required to parole an offender convicted of murder or a sex-related offense. Mosley, July 31, 1995, A.G. Op. #95-0504.

RESEARCH REFERENCES

ALR. State court's power to place defendant on probation without imposition of sentence. 56 A.L.R.3d 932.

§ 47-7-15. Seal of board; records and reports.

The board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the board shall be made by majority vote.

The board shall keep a record of its acts and shall notify each institution of its decisions relating to the persons who are or have been confined therein. At the close of each fiscal year the board shall submit to the Governor and to the Legislature a report with statistical and other data of its work.

SOURCES: Codes, 1942, § 4004-07; Laws, 1942, ch. 283; Laws, 1944, ch. 334, §§ 5, 18; Laws, 1950, ch. 524, § 8; brought forward, 1981, ch. 465, § 97; reenacted, Laws, 1984, ch. 471, § 107; reenacted, Laws, 1986, ch. 413, § 107; Laws, 1989, 1st Ex Sess, ch. 3, § 6, eff from and after May 1, 1989.

§ 47-7-17. Examination of offender's record; eligibility for parole.

Within one (1) year after his admission and at such intervals thereafter as it may determine, the board shall secure and consider all pertinent information regarding each offender, except any under sentence of death or otherwise ineligible for parole, including the circumstances of his offense, his previous social history, his previous criminal record, including any records of law enforcement agencies or of a youth court regarding that offender's juvenile criminal history, his conduct, employment and attitude while in the custody of the department, the case plan created to prepare the offender for parole, and the reports of such physical and mental examinations as have been made. The board shall furnish at least three (3) months' written notice to each such offender of the date on which he is eligible for parole.

Before ruling on the application for parole of any offender, the board may require a parole-eligible offender to have a hearing as required in this chapter before the board and to be interviewed. The hearing shall be held no later than thirty (30) days prior to the month of eligibility. No application for parole of a person convicted of a capital offense shall be considered by the board unless and until notice of the filing of such application shall have been published at least once a week for two (2) weeks in a newspaper published in or having general circulation in the county in which the crime was committed. The board shall, within thirty (30) days prior to the scheduled hearing, also give notice of the filing of the application for parole to the victim of the offense for which the prisoner is incarcerated and being considered for parole or, in case the offense be homicide, a designee of the immediate family of the victim, provided the victim or designated family member has furnished in writing a current address to the board for such purpose. Parole release shall, at the hearing, be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. An offender shall be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care, and when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. When the board determines that the offender will need transitional housing upon release in order to improve the likelihood of him or her becoming a law-abiding citizen, the board may parole the offender with the condition that the inmate spends no more than six (6) months in a transitional reentry center. At least fifteen (15) days prior to the release of an offender on parole, the director of records of the department shall give the written notice which is required pursuant to Section 47-5-177. Every offender while on parole shall remain in the legal custody of the department from which he was released and shall be amenable to the orders of the board. Upon determination by the board that an offender is eligible for release by parole, notice shall also be given within at least fifteen (15) days before release, by the board to the victim of the offense or the victim's family member, as indicated above, regarding the date when the offender's release shall occur, provided a current address of the victim or the victim's family member has been furnished in writing to the board for such purpose.

Failure to provide notice to the victim or the victim's family member of the filing of the application for parole or of any decision made by the board regarding parole shall not constitute grounds for vacating an otherwise lawful parole determination nor shall it create any right or liability, civilly or criminally, against the board or any member thereof.

A letter of protest against granting an offender parole shall not be treated as the conclusive and only reason for not granting parole.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of offenders for parole, the conduct of parole hearings, or conditions to be imposed upon parolees, including a condition that the parolee submit, as provided in Section 47-5-601 to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States. The board shall have the authority to adopt rules related to the placement of certain offenders on unsupervised parole and for the operation of transitional reentry centers. However, in no case shall an offender be placed on unsupervised parole before he has served a minimum of fifty percent (50%) of the period of supervised parole.

SOURCES: Codes, 1942, § 4004-08; Laws, 1950, ch. 524, § 9; Laws, 1972, ch. 335, § 1; Laws, 1976, ch. 440, § 8; Laws, 1981, ch. 382, § 1; reenacted, Laws, 1981, ch. 465, § 98; Laws, 1983, ch. 375, § 2, ch. 435, § 4; reenacted, Laws, 1984, ch. 471, § 108; Laws, 1985, ch. 444, § 2; reenacted, Laws, 1986, ch. 413, § 108; Laws, 1986, ch. 422, § 3; Laws, 1986, ch. 424, § 1; Laws, 1989, 1st Ex Sess ch. 3, § 7; Laws, 1990, ch. 399, § 2; Laws, 1994, 1st Ex Sess, ch. 25, § 3; Laws, 2014, ch. 457, § 45, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in the first undesignated paragraph, inserted "the case plan created to prepare the offender for parole," near the end of the first sentence; in the second undesignated paragraph, in the first sentence, substituted "require a parole-eligible" for "have the" and "to have a hearing as required in this chapter before the board and to be interviewed" for "appear before it and interview him"; in the second sentence, deleted "in order for the department to address any special conditions required by the board" from the end, and substituted "no later than thirty (30) days prior" for "two (2) months," in the fourth sentence, inserted "within thirty (30) days prior to the scheduled hearing,"; in the fifth sentence, deleted "A" at the beginning and inserted "release" following "Parole" and "at the hearing," preceding "be ordered only for the best"; added a seventh sentence; and at the beginning of the eighth sentence, substituted "At least fifteen (15) days" for "Within forty-eight (48) hours"; deleted the second to last sentence, which read: "The board, upon rejecting the application for parole of any offender, shall within thirty (30) days following such rejection furnish that offender in general terms the reasons therefor in writing"; and inserted "within at least fifteen (15) days before release," near the beginning of the last sentence; in the last undesignated paragraph, in the second to last sentence, substituted "related to the placement of" for "permitting," deleted "to be placed" following "certain offenders" and added "and for the operation of transitional reentry centers" to the end; and in the last sentence, substituted "fifty percent (50%) of the period" for "three (3) years."

Cross References — Disclosure of youth court records, see § 43-21-261.

Requirement that classification committee provide parole board with copies of classifications, see § 47-5-103.

Exclusivity of State Parole Board's responsibility for granting or revoking parole, as provided by this section, see § 47-7-5.

Provision that the Department of Corrections shall not make any rules which are inconsistent with those imposed by the State Parole Board pursuant to this section with respect to unsupervised parole, see § 47-7-23.

Power of court to suspend sentence and place defendant on probation, see § 47-7-33.

Inapplicability of Mississippi Rules of Evidence in proceedings to grant or revoke probation, see Miss. R. Evid. 1101.

Case plan for parole-eligible inmates, see § 47-7-3.1.

JUDICIAL DECISIONS

1. In general; construction.
2. Change in law, regulation or interpretation; ex post facto effect.
3. Conduct of board members; liability.
4. Presence of prisoner at hearing.
5. Miscellaneous.
6. Discretion.

1. In general; construction.

Denial of the inmate's petition for writ of habeas corpus was affirmed as (1) Miss. Code Ann. § 47-7-17 did not create a constitutionally protected liberty interest in parole, (2) the inmate waived his right to argue that he was prejudiced by the Parole Board's failure to publish notice of his parole hearing as it was not raised below, and (3) the inmate did not argue in his petition that he had ever been denied the opportunity to call witnesses or that the Parole Board refused to listen to their testimony. Way v. Miller, 919 So. 2d 1036 (Miss. Ct. App. 2005).

Inmate's complaint filed with the circuit court for a review of the parole board's determinations was properly dismissed because the circuit court did not have the jurisdiction to grant or deny parole. Further, while the inmate had entitled his petition a habeas corpus action, because the parole board had complete discretion to grant or deny parole, the inmate failed to state a claim that would have required an evidentiary hearing. Johnson v. Miller, 919 So. 2d 273 (Miss. Ct. App. 2005).

Parole statutes contain no mandatory language, but instead employ permissive "may" rather than "shall," and thus prisoners have no constitutionally recognized liberty interest in parole. Vice v. State, 679 So. 2d 205 (Miss. 1996).

The Mississippi parole statutes do not create a constitutionally protected liberty interest in the form of an expectation of parole because of the use of the permissive "may" in § 47-7-3, which provides that a prisoner "may be released on parole as hereinafter provided," read in the context of the other provisions of that section and, as well, those of § 47-7-17. Thus, Mississippi law did not vest a convicted and incarcerated felon with a liberty interest in parole entitling him to due process of law incident to his application for parole.

Harden v. State, 547 So. 2d 1150 (Miss. 1989).

2. Change in law, regulation or interpretation; ex post facto effect.

An administrative correction of a prior misinterpretation of parole laws is not a change in the law so as to violate the ex post facto clause of the United States or Mississippi Constitutions; even if the correction of a former mistaken interpretation of parole law did reach the level of a change in law, administrative decisions with regard to parole law eligibility are not "laws annexed to the crime when committed." Taylor v. Mississippi State Probation & Parole Bd., 365 So. 2d 621 (Miss. 1978).

3. Conduct of board members; liability.

Parole board members who voted to parole prisoner to Friends of Alcoholics (FOA) were not liable to a person injured by the parolee after he left FOA without leave; parole board members did not lose qualified immunity, either by failure to perform ministerial functions or by acting with reckless disregard in voting to parole the parolee to FOA, where pertinent information regarding parolee was contained in his parole file and the master file which were reviewed by board when case was considered. Board members substantially complied with duties and requirements set forth in the statute for members of parole board, particularly § 47-7-17, and there was no violation of ministerial duties. Additionally, although board members were lay, untrained, unschooled, and inexperienced in complex and sensitive problems of probation and parole, and even though judgment and decision was deficient and lacking, they were exercising discretionary authority; their decision was the result of personal deliberation and judgment, and they did not commit willful wrongs or malicious acts, or act with reckless disregard or exceed and pervert their discretionary authority. (As a result of case, legislature enacted law providing for full time parole board with members salaried employees of State, immune from civil liability for any official acts taken in good faith and in exercise of board's legitimate governmental authority.) Sykes v. Grantham, 567 So. 2d 200 (Miss. 1990).

A complaint which alleged that members of the parole board were guilty of gross neglect of their duties under § 47-7-17 in paroling an inmate who subsequently injured a person was sufficient to pierce the shield of the officials' qualified immunity to suit. Grantham v. Mississippi Dep't of Cors., 522 So. 2d 219 (Miss. 1988).

4. Presence of prisoner at hearing.

Court rejected the inmate's claim that he was entitled to review his parole board file, because under Miss. Code Ann. § 47-7-17, the board may have the offender appear before it and interview him before ruling on the application for parole of any offender; therefore, if the parole board was under no obligation to have the offender present at his parole hearing, it logically followed that the board was under no obligation to disclose its file to the offender. Edmond v. Miller, 942 So. 2d 203 (Miss. Ct. App. 2006), writ of certiorari denied by 942 So. 2d 164, 2006 Miss. LEXIS 718 (Miss. 2006).

This section vests discretion with the parole board to determine whether an applicant for parole will appear before it for an interview and, therefore, a prisoner has no right to be present at the meeting of the parole board. Justus v. Mississippi State Parole Bd., 750 So. 2d 1277 (Miss. Ct. App. 1999).

5. Miscellaneous.

Trial court did not err by denying an inmate's motion for a preliminary injunction because nothing in the record supported the inmate's claim that the Mississippi State Parole Board arbitrarily denied him parole in violation of any Fourteenth Amendment right; the Parole Board denied the inmate's parole based upon the serious nature of the offense, the number of offenses committed, the inmate's police record, community opposition, and insufficient time served, and because the reasons stated by the Parole Board for denying the inmate's parole were areas that the Parole Board had authority to consider under Miss. Code Ann. § 47-7-17, those categories could not be viewed as arbitrary and capricious.

Rochell v. State, 36 So. 3d 479 (Miss. Ct. App. 2010).

Inmate's due process rights were not violated when a district attorney sent a letter to a parole board objecting to parole because there was no breach of a plea agreement; the district attorney kept the promise of making a sentencing recommendation, and eligibility for parole did not affect a voluntariness analysis since there was no right to parole. Garlotte v. State, 915 So. 2d 460 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 1279, 2005 Miss. LEXIS 769 (Miss. 2005).

A trial court erred in concluding that the State of Florida lost jurisdiction over a petitioner when it released her to the custody of a Mississippi bail bondsman because the effect of Florida's release of the petitioner to the State of Mississippi was a question to be answered in the first instance by a proper court of the State of Florida. Furthermore, the parole board was without statutory or other authority to condition the petitioner's parole on her voluntarily submitting herself to the custody of the State of Florida, which the petitioner had refused to do on several occasions, and the trial court compounded this error by removing this condition and ordering the parole board to release the petitioner immediately, which was beyond the court's authority since determining the eligibility for parole is peculiarly and solely a discretionary function of the parole board. State v. Read, 544 So. 2d 810 (Miss. 1989).

The decision in Gates v. Collier (CA5 Miss.) 501 F2d 1291, is not to be applied retroactively to require expungement of records made before the adoption of disciplinary procedures that conform to constitutional requirements. Leonard v. Mississippi State Probation & Parole Bd., 509 F.2d 820 (5th Cir. 1975), reh'g denied, 515 F.2d 510 (5th Cir. 1975), cert. denied, 423 U.S. 998, 96 S. Ct. 428, 46 L. Ed. 2d 373 (1975).

The state parole board did not have authority to issue a release to detainer only and, under the guise of such an instrument, to transfer custody of a prisoner from the state penitentiary to a federal penitentiary. As prisoner's transfer to federal authorities was void from the beginning, he had no right to complain of his return to state custody following his posting of appeal bond in the federal case. Jones v. State, 312 So. 2d 717 (Miss. 1975).

6. Discretion.

Clearly, the inmate's prison conduct record was not identical to the prison conduct records of the other two co-defendants. He committed a violent felony after having been convicted of homicide, the parole board had discretion to grant or deny parole for each individual, and its decision to deny parole to the inmate while granting parole to the co-defendants satisfied the rational basis standard of review. Johnson v. Miller, 919 So. 2d 273 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

ALR. Immunity of public officer from liability for injuries caused by negligently released individual. 5 A.L.R.4th 773.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 A.L.R.4th 722.

The propriety of conditioning parole on defendant's not entering specified geographical area. 54 A.L.R.5th 743.

Right under Federal Constitution of prison inmate eligible for parole consideration to inspect his institutional files. 44 A.L.R. Fed. 390.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 81, 84 et seq., 98, 101 et seq.

CJS. 67A C.J.S., Pardon and Parole §§ 50, 51.

§ 47-7-18. Conditions for release of parole-eligible inmates without hearing; hearing required under certain circumstances.

(1) Each inmate eligible for parole pursuant to Section 47-7-3, shall be released from incarceration to parole supervision on the inmate's parole eligibility date, without a hearing before the board, if:

(a) The inmate has met the requirements of the parole case plan established pursuant to Section 47-7-3.1;

(b) A victim of the offense has not requested the board conduct a hearing;

(c) The inmate has not received a serious or major violation report within the past six (6) months;

(d) The inmate has agreed to the conditions of supervision; and

(e) The inmate has a discharge plan approved by the board.

(2) At least thirty (30) days prior to an inmate's parole eligibility date, the department shall notify the board in writing of the inmate's compliance or noncompliance with the case plan. If an inmate fails to meet a requirement of the case plan, prior to the parole eligibility date, he or she shall have a hearing before the board to determine if completion of the case plan can occur while in the community.

(3) Any inmate for whom there is insufficient information for the department to determine compliance with the case plan shall have a hearing with the board.

(4) A hearing shall be held with the board if requested by the victim following notification of the inmate's parole release date pursuant to Section 47-7-17.

(5) A hearing shall be held by the board if a law enforcement official from the community to which the inmate will return contacts the board or the department and requests a hearing to consider information relevant to public safety risks posed by the inmate if paroled at the initial parole eligibility date. The law enforcement official shall submit an explanation documenting these concerns for the board to consider.

(6) If a parole hearing is held, the board may determine the inmate has sufficiently complied with the case plan or that the incomplete case plan is not the fault of the inmate and that granting parole is not incompatible with public safety, the board may then parole the inmate with appropriate conditions. If the board determines that the inmate has sufficiently complied with the case plan but the discharge plan indicates that the inmate does not have appropriate housing immediately upon release, the board may parole the inmate to a transitional reentry center with the condition that the inmate spends no more than six (6) months in the center. If the board determines that the inmate has not substantively complied with the requirement(s) of the case plan it may deny parole. If the board denies parole, the board may schedule a subsequent parole hearing and, if a new date is scheduled, the board shall identify the corrective action the inmate will need to take in order to be granted parole. Any

inmate not released at the time of the inmate's initial parole date shall have a parole hearing at least every year.

SOURCES: Laws, 2014, ch. 457, § 44, effective from and after July 1, 2014.

Editor's Note — Former Section 47-7-18 required notification of certain law enforcement agencies and the crime victim or victim's family of the parole of a prisoner.

Former Section 47-7-18 required notification of certain law enforcement agencies and the crime victim or victim's family of the parole of a prisoner.

Repealed by Laws of 1990, ch. 399, § 3, eff from and after July 1, 1990. [Laws, 1989, 1st Ex Sess, ch. 3, § 3]

§ 47-7-19. Correctional system officials to permit access to offenders and to give information to board.

It shall be the duty of all correctional system officials to grant to the members of the board or its properly accredited representatives, access at all reasonable times to any person over whom the board may have jurisdiction under this chapter; to provide for the board or such representatives facilities for communicating with and observing the offender; and to furnish to the board such reports as the board shall require concerning the conduct and character of any offender in the department of corrections custody and any other facts deemed by the board pertinent in determining whether such offender shall be paroled.

It shall be the duty of any judge, district attorney, county attorney, police officer, or other public official of the state, having information with reference to any person eligible for parole, to send such information as may be in his possession or under his control to the board, in writing, upon request of any member or employee thereof.

SOURCES: Codes, 1942, § 4004-10; Laws, 1950, ch. 524, § 11; Laws, 1956, ch. 262, § 5; Laws, 1976, ch. 440, § 83; reenacted, Laws, 1981, ch. 465, § 99; reenacted, Laws, 1984, ch. 471, § 109; reenacted, Laws, 1986, ch. 413, § 109, eff from and after passage (approved March 28, 1986).

§ 47-7-21. Privileged information.

All information obtained in the discharge of official duty by a field officer as an employee of the Department of Corrections shall be privileged and shall not be disclosed directly or indirectly to anyone other than to (a) the State Parole Board, (b) a judge, or (c) law enforcement agencies when such information is relevant to criminal activity.

SOURCES: Codes, 1942, § 4004-16; Laws, 1950, ch. 524, § 17; brought forward, Laws, 1981, ch. 465, § 100; reenacted, Laws, 1984, ch. 471, § 110; reenacted, Laws, 1986, ch. 413, § 110; Laws, 1987, ch. 340, eff from and after July 1, 1987.

Cross References — Inapplicability of Mississippi Rules of Evidence in proceedings to grant or revoke probation, see Miss. R. Evid. 1101.

RESEARCH REFERENCES

ALR. Communications to social worker as privileged. 50 A.L.R.3d 563.

Bankruptcy discharge of student loan on ground of undue hardship under § 523(a)(8)(B) of Bankruptcy Code of 1978 (11 USCS § 523(a)(8)(B)). 63 A.L.R. Fed. 570.

Rights and obligations of Federal Government, under 20 USCS § 1080, when student borrower defaults on federally insured loan. 73 A.L.R. Fed. 303.

Am Jur. 15A Am. Jur. 2d, Colleges and Universities § 22.

CJS. 14A C.J.S., Colleges and Universities § 34.

§ 47-7-23. Rules and regulations.

Except as otherwise provided by law, the Department of Corrections shall have the power and duty to make rules for the conduct of persons heretofore or hereafter placed on parole under the supervision of the Department of Corrections and for the investigation and supervision of such persons, which supervision may include a condition that such persons submit, as provided in Section 47-5-601, to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States. The department shall not make any rules which shall be inconsistent with the rules imposed by the State Parole Board pursuant to Section 47-7-17 on offenders who are placed on unsupervised parole.

SOURCES: Codes, 1942, § 4004-12; Laws, 1944, ch. 334, § 17; Laws, 1950, ch. 524, § 13; Laws, 1976, ch. 440, § 84; reenacted, Laws, 1981, ch. 465, § 101; Laws, 1983, ch. 435, § 5; reenacted, Laws, 1984, ch. 471, § 111; reenacted, Laws, 1986, ch. 413, § 111; Laws, 1986, ch. 424, § 2, eff from and after July 1, 1986.

RESEARCH REFERENCES

ALR. Propriety of requirement, as condition of probation, that defendant refrain from use of intoxicants. 19 A.L.R.4th 1251.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 79, 94, 122.

CJS. 67A C.J.S., Pardon and Parole §§ 59, 60, 62.

§ 47-7-25. Gratuities to paroled offender.

When an offender is placed on parole he shall receive, if needed, from the state, civilian clothing and transportation to the place in which he is to reside. At the discretion of the board the offender may be advanced such sum for his temporary maintenance as the board may allow. The aforesaid gratuities are to be furnished by the commissioner of corrections who is authorized to charge the actual cost of same in his account as commissioner of corrections.

SOURCES: Codes, 1942, § 4004-11; Laws, 1944, ch. 334, § 13; Laws, 1950, ch. 524, § 12; Laws, 1976, ch. 440, § 85; reenacted, Laws, 1981, ch. 465, § 102; reenacted, Laws, 1984, ch. 471, § 112; reenacted, Laws, 1986, ch. 413, § 112, eff from and after passage (approved March 28, 1986).

§ 47-7-27. Return of violator of parole or earned release supervision; arrest of offender; hearing; revocation of parole; imprisonment for technical violation to be served in technical violation center.

(1) The board may, at any time and upon a showing of probable violation of parole, issue a warrant for the return of any paroled offender to the custody of the department. The warrant shall authorize all persons named therein to return the paroled offender to actual custody of the department from which he was paroled.

(2) Any field supervisor may arrest an offender without a warrant or may deputize any other person with power of arrest by giving him a written statement setting forth that the offender has, in the judgment of that field supervisor, violated the conditions of his parole or earned-release supervision. The written statement delivered with the offender by the arresting officer to the official in charge of the department facility from which the offender was released or other place of detention designated by the department shall be sufficient warrant for the detention of the offender.

(3) The field supervisor, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. The field supervisor shall at once notify the board or department of the arrest and detention of the offender and shall submit a written report showing in what manner the offender has violated the conditions of parole or earned-release supervision. An offender for whose return a warrant has been issued by the board shall, after the issuance of the warrant, be deemed a fugitive from justice.

(4) Whenever an offender is arrested on a warrant for an alleged violation of parole as herein provided, the board shall hold an informal preliminary hearing within seventy-two (72) hours to determine whether there is reasonable cause to believe the person has violated a condition of parole. A preliminary hearing shall not be required when the offender is not under arrest on a warrant or the offender signed a waiver of a preliminary hearing. The preliminary hearing may be conducted electronically.

(5) The right of the State of Mississippi to extradite persons and return fugitives from justice, from other states to this state, shall not be impaired by this chapter and shall remain in full force and effect. An offender convicted of a felony committed while on parole, whether in the State of Mississippi or another state, shall immediately have his parole revoked upon presentment of a certified copy of the commitment order to the board. If an offender is on parole and the offender is convicted of a felony for a crime committed prior to the offender being placed on parole, whether in the State of Mississippi or another state, the offender may have his parole revoked upon presentment of a certified copy of the commitment order to the board.

(6)(a) The board shall hold a hearing for any parolee who is detained as a result of a warrant or a violation report within twenty-one (21) days of the parolee's admission to detention. The board may, in its discretion, terminate the parole or modify the terms and conditions thereof. If the board revokes parole for a technical violation the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred and eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the board may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(b) If the board does not hold a hearing or does not take action on the violation within the twenty-one-day time frame in paragraph (a) of this subsection, the parolee shall be released from detention and shall return to parole status. The board may subsequently hold a hearing and may revoke parole or may continue parole and modify the terms and conditions of parole. If the board revokes parole for a technical violation the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the board may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(c) For a parolee charged with a technical violation who has not been detained awaiting the revocation hearing, the board may hold a hearing within a reasonable time. The board may revoke parole or may continue parole and modify the terms and conditions of parole. If the board revokes parole for a technical violation the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the board may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(7) Unless good cause for the delay is established in the record of the proceeding, the parole revocation charge shall be dismissed if the revocation hearing is not held within the thirty (30) days of the issuance of the warrant.

(8) The chairman and each member of the board and the designated parole revocation hearing officer may, in the discharge of their duties, administer oaths, summon and examine witnesses, and take other steps as may be necessary to ascertain the truth of any matter about which they have the right to inquire.

(9) The board shall provide semiannually to the Oversight Task Force the number of warrants issued for an alleged violation of parole, the average time between detention on a warrant and preliminary hearing, the average time between detention on a warrant and revocation hearing, the number of ninety-day sentences in a technical violation center issued by the board, the number of one-hundred-twenty-day sentences in a technical violation center issued by the board, the number of one-hundred-eighty-day sentences issued by the board, and the number and average length of the suspended sentences imposed by the board in response to a violation.

SOURCES: Codes, 1942, § 4004-13; Laws, 1944, ch. 334, § 11; Laws, 1950, ch. 524, § 14; Laws, 1956, ch. 262, § 6; Laws, 1976, ch. 440, § 86; reenacted, Laws, 1981, ch. 465, § 103; reenacted, Laws, 1984, ch. 471, § 113; Laws, 1986, ch. 357, § 1; reenacted, Laws, 1986, ch. 413, § 113; Laws, 1989, ch. 306, § 1; Laws, 1995, ch. 596, § 7; Laws, 2010, ch. 470, § 1; Laws, 2012, ch. 488, § 1; Laws, 2014, ch. 457, § 56, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment deleted the last sentence from (1) regarding the offender remaining incarcerated pending hearing; added (4), (6), (7), and (9) and redesignated the remaining subsections accordingly.

Cross References — Procedure following violation of probation granted by court, see §§ 47-7-33 et seq.

Procedure upon violation of condition of suspended sentence, see §§ 99-19-27, 99-19-29.

Oversight Task Force, see § 47-5-6.

Technical violation centers, see § 47-7-38.1.

JUDICIAL DECISIONS

1. Discretion of parole board.
2. Grounds for revocation.
3. Constitutional issues.
4. Necessity for hearing.
5. Burden of proof.
6. Credit for time served, for time on parole.
7. Miscellaneous.

1. Discretion of parole board.

Court rejected the inmate's claim that Miss. Code Ann. § 47-7-27 was unconstitutionally vague and ambiguous and that it discriminated against him as an inmate sentenced to life in prison, because the language of § 47-7-27 was quite clear and an ordinary person of common intelligence upon reading it could understand what was allowed and what was not. Section 47-7-27 applied to offenders who previously had parole revoked, and provided that the inmate's eligibility for a second parole was subject to the parole board's discretion, and that the inmate was only entitled to a psychological evaluation if the parole board exercised its discretion to grant him a second parole. Edmond v. Miller, 942 So. 2d 203 (Miss. Ct. App. 2006), writ of certiorari denied by 942 So. 2d 164, 2006 Miss. LEXIS 718 (Miss. 2006).

Circuit court properly dismissed the prisoner's civil suit alleging that the failure of the parole board to revoke his parole upon entry of later burglary pleas violated his civil rights. He failed to prove that the parole board had abused its discretion. Marshall v. Ruth, 882 So. 2d 252 (Miss. Ct. App. 2004).

2. Grounds for revocation.

On revocation of parole, it must be shown that parolee has violated terms and conditions of parole. Alexander v. State, 667 So. 2d 1 (Miss. 1995), cert. denied, 517 U.S. 1145, 116 S. Ct. 1441, 134 L. Ed. 2d 562 (1996).

Commission of felony while on parole is grounds for revocation. Alexander v. State, 667 So. 2d 1 (Miss. 1995), cert. denied, 517 U.S. 1145, 116 S. Ct. 1441, 134 L. Ed. 2d 562 (1996).

Evidence that parolee violated terms and conditions of his parole supported revocation of his parole by state Parole Board, even though parolee successfully appealed conviction which initially led to revocation of his parole; Parole Board did not rely solely on parolee's conviction for simple assault as violation of condition of his parole agreement requiring him to live and remain at liberty without violating law, but also upon parolee's statements at parole revocation hearing that he was guilty of simple assault and had ceased taking his prescribed medication. Alexander v. State, 667 So. 2d 1 (Miss. 1995), cert. denied, 517 U.S. 1145, 116 S. Ct. 1441, 134 L. Ed. 2d 562 (1996).

Before parole of parolee acquitted of a criminal charge may be revoked, state must offer actual proof that he committed an act violating terms and conditions of his parole. Alexander v. State, 667 So. 2d 1 (Miss. 1995), cert. denied, 517 U.S. 1145, 116 S. Ct. 1441, 134 L. Ed. 2d 562 (1996).

A trial court properly denied a parolee's petition for writ of habeas corpus, in which the parolee claimed that he was not afforded a timely parole revocation hearing, where the admitted evidence showed that the parolee had violated the conditions of his parole by 2 Tennessee felony convictions and failure to waive extradition back to Mississippi; these were reasonable grounds for revoking his parole, and therefore all procedural due process guarantees were met. Godsey v. Houston, 584 So. 2d 389 (Miss. 1991).

Acquittal in a criminal proceeding does not per se preclude parole revocation predicated upon the same charge. The terms and conditions of parole are broader than a mere directive that the parolee commit no felony. Where a prisoner was acquitted of the crime of rape, with which he had been charged while on parole, the acquittal might have meant that the prisoner was not guilty of any act which constituted a violation of the terms and conditions of his parole and, therefore, the acquittal on the criminal charge meant at the very least that, before his parole could be revoked, the State was required to offer actual proof that he committed an act violating the terms and conditions of his parole, and the mere fact that he was arrested and charged with rape would not suffice. Moore v. Ruth, 556 So. 2d 1059 (Miss. 1990).

Conviction of a felony by a parolee is a reasonable ground under Mississippi standards for revocation of parole. Bobkoskie v. State, 495 So. 2d 497 (Miss. 1986).

Evidence in parole revocation proceeding showed that parolee not only violated the conditions of his parole which required that he "live and remain at liberty without violating the law", but it showed that the 2 violations, convictions for the crime of burglary in State of Colorado, were reasonable grounds for revocation of his parole under state standards. Bobkoskie v. State, 495 So. 2d 497 (Miss. 1986).

3. Constitutional issues.

Inmate's due-process rights were not violated when his parole was revoked because upon receiving a certified copy of the order of the court of appeals, the parole board had authority pursuant to Miss. Code Ann. 47-7-27 to immediately revoke the inmate's parole on his earlier conviction; a preliminary revocation hearing and a parole-revocation hearing were held, and the parole board then sent the inmate a letter, which provided notice of its decision to revoke his parole and afforded an opportunity to present evidence on his behalf. Walker v. State, 35 So. 3d 555 (Miss. Ct. App. 2010).

A trial court properly denied a parolee's petition for writ of habeas corpus, in which the parolee claimed that he was not afforded a timely parole revocation hearing, where the admitted evidence showed that the parolee had violated the conditions of his parole by 2 Tennessee felony convictions and failure to waive extradition back to Mississippi; these were reasonable grounds for revoking his parole, and therefore all procedural due process guarantees were met. Godsey v. Houston, 584 So. 2d 389 (Miss. 1991).

Denying an inmate credit for time served while on parole did not deprive her of rights secured under the double jeopardy clause, deny her due process of law, or subject her to an ex post facto law. Segarra v. State, 430 So. 2d 408 (Miss. 1983).

4. Necessity for hearing.

Where petitioner knew why deputy administrative assistant to the state probation and parole board had come to the jail in which petitioner was lodged for public drunkenness and he knew the parole violation he was charged with, when petitioner freely admitted that he had become intoxicated there was adequate reason for his detention and return to the state penitentiary without the necessity of a preliminary hearing. Gardner v. Collier, 274 So. 2d 662 (Miss. 1973).

5. Burden of proof.

There are differing burdens of proof in a criminal prosecution and in a parole revocation proceeding; at a criminal trial, the prosecution must prove the accused guilty beyond a reasonable doubt while in parole revocation proceedings, the accused is generally protected by lesser standards of proof. Thus, the failure of a jury to find one guilty beyond a reasonable doubt does not mean that, by some lesser standard, the facts and circumstances may not be found to be a violation of the terms and conditions of parole. However, where a prisoner was acquitted of the crime of rape, with which he had been charged while on parole, the acquittal might have meant that the prisoner was not guilty of any act which constituted a violation of the terms and conditions of his parole and, therefore, the acquittal on the criminal charge meant at the very least that, before his parole could be revoked, the State was required to offer actual proof that he committed an act violating the terms and conditions of his parole, and the mere fact that he was arrested and charged with rape would not suffice. Moore v. Ruth, 556 So. 2d 1059 (Miss. 1990).

6. Credit for time served, for time on parole.

An inmate was properly denied credit for time served upon her original sentence for time spent out of prison on parole prior to its revocation, even though credit is allowed for time spent on work release, which is functionally similar to parole. Segarra v. State, 430 So. 2d 408 (Miss. 1983).

7. Miscellaneous.

Inmate's claim that his parole was unlawfully revoked was not procedurally barred because his post-conviction relief motion fit within an exception to both the general prohibition against successive writs under the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. ‘ 99-39-23(6), and the three-year statute of limitations under the Act, Miss. Code Ann. ’ 99-39-5(2)(b). Walker v. State, 35 So. 3d 555 (Miss. Ct. App. 2010).

Field supervisor, within the meaning of Miss. Code Ann. § 47-7-27, is someone who supervises parolees, rather than someone who supervises other field officers. In other words, a field supervisor is someone who supervises in the field. Furthermore, the Mississippi Code uses the terms field officer and field supervisor interchangeably. Barlow v. State, 8 So. 3d 196 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 204 (Miss. 2009).

Pursuant to Miss. Code Ann. § 47-7-27 (Rev. 2004), the officer had the authority to initiate the roadblock with the sheriff's department, even though he was a field officer and not a field supervisor, and because he had received tips that a parolee was actively involved in criminal activity, he was not required to wait until he had independent reason to believe that defendant had committed a crime to arrest him. Barlow v. State, 8 So. 3d 196 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 204 (Miss. 2009).

If parolee violates term or condition of parole, parole authorities need not await principal trial before commencing proceedings to have parole revoked. Alexander v. State, 667 So. 2d 1 (Miss. 1995), cert. denied, 517 U.S. 1145, 116 S. Ct. 1441, 134 L. Ed. 2d 562 (1996).

If parolee's petition for mandamus, which sought to compel the chairman of the Mississippi Parole Board to either return parolee from Colorado to Mississippi for parole revocation hearing or to hold a revocation hearing in his absence, should be treated as a motion under § 99-39-5, for relief on grounds his parole was unlawfully revoked, parolee would not be entitled to relief in view of language in § 47-7-27. Bobkoskie v. State, 495 So. 2d 497 (Miss. 1986).

Fourteenth Amendment precludes state court from automatically revoking probation and imposing prison term when probationer is unable to pay fine, without finding that probationer has not made bona fide effort to pay fine or that alternative forms of punishment are adequate. Bearden v. Georgia, 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983), on remand, 167 Ga. App. 334, 308 S.E.2d 63 (1983).

ATTORNEY GENERAL OPINIONS

Based on specified facts pertaining to an encounter with and rearrest of a probationer, the probationer himself was ultimately responsible for his own medical expenses arising from the encounter; however, assuming he was indigent, the county would be responsible for the medical expenses incurred as the injury occurred and the expenses were incurred prior to the initiation of proceedings for revocation of his probation. Griffith, May 3, 2002, A.G. Op. #02-0232.

When a probationer is arrested for an unrelated crime the prisoner is in the custody of the local government and the local government must bear the costs of incarceration; however, upon the issuance of a warrant pursuant to this section or § 47-7-37 the prisoner becomes a state inmate and the Mississippi Department of Corrections must bear the cost of incarceration. Pope, Mar. 28, 2003, A.G. Op. #03-0137.

Upon issuance of a warrant pursuant to Section 47-7-27, the prisoner becomes a state inmate and the Mississippi Department of Corrections must bear the cost of incarceration. Howard, July 22, 2005, A.G. Op. 05-0345.

RESEARCH REFERENCES

ALR. Right to notice and hearing before revocation of suspension of sentence, parole, conditional pardon, or probation. 29 A.L.R.2d 1074.

Propriety, in imposing sentence for original offense after revocation of probation, of considering acts because of which probation was revoked. 65 A.L.R.3d 1100.

Acquittal in criminal proceeding as precluding revocation of parole on same charge. 76 A.L.R.3d 578.

Power of court, after expiration of probation term, to revoke or modify probation for violations committed during the probation term. 13 A.L.R.4th 1240.

Propriety of increased sentence following revocation of probation. 23 A.L.R.4th 883.

Construction and application of provision of Parole Commission and Reorganization Act (18 USCS § 4214(c)) requiring that alleged parole violator receive revocation hearing within 90 days of date of retaking. 56 A.L.R. Fed. 601.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 127, 130, 133, 147.

CJS. 67A C.J.S., Pardon and Parole §§ 75 et seq.

§ 47-7-29. Effect of conviction of felony while on parole or earned-release supervision.

Any prisoner who commits a felony while at large upon parole or earned-release supervision and who is convicted and sentenced therefor shall be required to serve such sentence after the original sentence has been completed.

SOURCES: Codes, 1942, § 4004-14; Laws, 1950, ch. 524, § 15; brought forward, Laws, 1981, ch. 465, § 104; reenacted, Laws, 1984, ch. 471, § 114; reenacted, Laws, 1986, ch. 413, § 114; Laws, 1995, ch. 596, § 8, eff from and after June 30, 1995.

JUDICIAL DECISIONS

1. In general.

Defendant cited no authority for his interpretation of Miss. Code Ann. § 47-7-29 that his death sentence should not be imposed until he finished serving his prior life sentence; the record did not indicate that defendant's parole was ever revoked so as to have his earlier sentence reimposed, and Miss. Code Ann. § 99-19-106 provided that execution should be set on motion of the State after all state and federal remedies had been exhausted. Mitchell v. State, 886 So. 2d 704 (Miss. 2004), writ of certiorari denied by 544 U.S. 1022, 125 S. Ct. 1982, 161 L. Ed. 2d 864, 2005 U.S. LEXIS 3824, 73 U.S.L.W. 3649 (2005).

Defendant's claim that he could not be executed until he had fully served his two prior terms of incarceration, pursuant to Miss. Code Ann. § 47-7-29, was moot because the sentences had been served; further, an inmate sentenced to death may be executed whenever his appeals are exhausted, no matter what additional sentence he may be under. Grayson v. State, 879 So. 2d 1008 (Miss. 2004), writ of certiorari denied by 543 U.S. 1155, 125 S. Ct. 1301, 161 L. Ed. 2d 122, 2005 U.S. LEXIS 1593, 73 U.S.L.W. 3495 (2005).

A trial court properly denied a parolee's petition for writ of habeas corpus, in which the parolee claimed that he was not afforded a timely parole revocation hearing, where the admitted evidence showed that the parolee had violated the conditions of his parole by 2 Tennessee felony convictions and failure to waive extradition back to Mississippi; these were reasonable grounds for revoking his parole, and therefore all procedural due process guarantees were met. Godsey v. Houston, 584 So. 2d 389 (Miss. 1991).

Evidence in parole revocation proceeding showed that parolee not only violated the conditions of his parole which required that he "live and remain at liberty without violating the law", but it showed that the 2 violations, convictions for the crime of burglary in State of Colorado, were reasonable grounds for revocation of his parole under state standards. Bobkoskie v. State, 495 So. 2d 497 (Miss. 1986).

Conviction of a felony by a parolee is a reasonable ground under Mississippi standards for revocation of parole. Bobkoskie v. State, 495 So. 2d 497 (Miss. 1986).

RESEARCH REFERENCES

ALR. Propriety, in imposing sentence for original offense after revocation of probation, of considering acts because of which probation was revoked. 65 A.L.R.3d 1100.

Acquittal in criminal proceeding as precluding revocation of parole on same charge. 76 A.L.R.3d 578.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 152-155.

CJS. 67A C.J.S., Pardon and Parole §§ 102-104.

§ 47-7-31. Department of correction to investigate pardon and commutation of sentence cases upon request.

Upon request of the governor the department of corrections shall investigate and report to him with respect to any case of pardon, commutation of sentence, reprieve, furlough or remission of fine or forfeiture.

Any attorney of record in the state of Mississippi representing any person whose record is before the department shall have the right to inspect such records on file with the department.

SOURCES: Codes, 1942, § 4004-15; Laws, 1942, ch. 283; Laws, 1944, ch. 334, § 15; Laws, 1950, ch. 524, § 16; Laws, 1952, ch. 382; Laws, 1956, ch. 262, § 7; Laws, 1976, ch. 440, § 87; reenacted, Laws, 1981, ch. 465, § 105; reenacted, Laws, 1984, ch. 471, § 115; reenacted, Laws, 1986, ch. 413, § 115, eff from and after passage (approved March 28, 1986).

Cross References — Constitutional authority for governor to grant reprieves and pardons and to remit fines, see Miss. Const. Art. 5, § 124.

JUDICIAL DECISIONS

1. Ineffective assistance.

Inmate's claim that he received ineffective assistance of counsel due to counsel's incorrect advice as to the applicability of the 25 percent law, Miss. Code Ann. § 47-7-31, to his child endangerment charge was rejected as it was based on affidavits that were attached to the inmate's appellate brief that were not part of the record. Ivy v. State, — So. 3d —, 2012 Miss. App. LEXIS 800 (Miss. Ct. App. Dec. 11, 2012).

RESEARCH REFERENCES

ALR. Right to assistance of counsel at proceedings to revoke probation. 44 A.L.R.3d 306.

Revocation of order commuting state criminal sentence. 88 A.L.R.5th 463.

Am Jur. 59 Am. Jur. 2d, Pardon and Parole §§ 15 et seq.

CJS. 67A C.J.S., Pardon and Parole §§ 22, 23.

§ 47-7-33. Power of court to suspend sentence and place defendant on probation; notice to Department of Corrections; support payments.

(1) When it appears to the satisfaction of any circuit court or county court in the State of Mississippi having original jurisdiction over criminal actions, or to the judge thereof, that the ends of justice and the best interest of the public, as well as the defendant, will be served thereby, such court, in termtime or in vacation, shall have the power, after conviction or a plea of guilty, except in a case where a death sentence or life imprisonment is the maximum penalty which may be imposed, to suspend the imposition or execution of sentence, and place the defendant on probation as herein provided, except that the court

shall not suspend the execution of a sentence of imprisonment after the defendant shall have begun to serve such sentence. In placing any defendant on probation, the court, or judge, shall direct that such defendant be under the supervision of the Department of Corrections.

(2) When any circuit or county court places an offender on probation, the court shall give notice to the Mississippi Department of Corrections within fifteen (15) days of the court's decision to place the offender on probation. Notice shall be delivered to the central office of the Mississippi Department of Corrections and to the regional office of the department which will be providing supervision to the offender on probation.

(3) When any circuit court or county court places a person on probation in accordance with the provisions of this section and that person is ordered to make any payments to his family, if any member of his family whom he is ordered to support is receiving public assistance through the State Department of Human Services, the court shall order him to make such payments to the county welfare officer of the county rendering public assistance to his family, for the sole use and benefit of said family.

SOURCES: Codes, 1942, § 4004-23; Laws, 1956, ch. 262, § 10; Laws, 1958, ch. 242; Laws, 1976, ch. 440, § 88; reenacted, Laws, 1981, ch. 465, § 106; reenacted, Laws, 1984, ch. 471, § 116; reenacted, Laws, 1986, ch. 413, § 116; Laws, 2000, ch. 622, § 2; Laws, 2014, ch. 457, § 10, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (1), deleted "or where the defendant has been convicted of a felony on a previous occasion in any court or courts of the United States and of any state of territories thereof" following "is the maximum penalty which may be imposed"; and in (3), substituted "Human Services" for "Public Welfare."

Cross References — Penalty of life imprisonment without parole for sale of specified quantities of certain drugs, see § 41-29-139.

Placing of offender on earned probation program, see § 47-7-47.

Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

JUDICIAL DECISIONS

1. In general.
2. Construction.
3. Applicability.
4. Time to suspend or to amend sentence; relation to appeal.
5. Revocation of suspension or probation.
6. Propriety of particular sentences — Timeliness of petition for.
7. — Convicted felons.

1. In general.

Trial court did not err in suspending three years of simple robbery sentences and all 10 years of an armed robbery sentence because the trial court had statutory authority to suspend the sentences in such a manner. Caviness v. State, 1 So. 3d 917 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 151 (Miss. 2009).

Defendant did not receive an illegal sentence where defendant failed to report and when defendant then appeared before the court the court imposed a sentence of 20 years for robbery; the 20-year sentence was one that could have been imposed at the time defendant pled guilty. Adams v. State, 954 So. 2d 1051 (Miss. Ct. App. 2007).

Where defendant had a prior conviction, the trial judge recognized he had made an error in suspending a portion of defendant's sentence per Miss. Code Ann. § 47-

7-33, and the judge attempted to correct the error with the amended sentencing order. Based on the transcript of the hearing on the motion to vacate judgment and sentence, it was apparent the trial judge imposed a sentence not of fifteen years with eight years suspended but a sentence of seven years to be served in the custody of the Mississippi Department of Corrections and eight years of post-release supervision; therefore, defendant did not receive an illegal sentence and any scrivener's error as to the sentencing transcript was subject to correction on remand. Willcutt v. State, 910 So. 2d 1189 (Miss. Ct. App. 2005).

Defendant maintained the circuit court's sentencing order was illegal because, according to Miss. Code Ann. § 47-7-33(1), he could not be given a suspended sentence since he was a prior convicted felon. While that was true, he stood mute when he was handed an illegal sentence which was more favorable than what the legal sentence would have been; thus, he was not entitled to relief in his postconviction action. Hughery v. State, 915 So. 2d 457 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 1279, 2005 Miss. LEXIS 779 (Miss. 2005).

Defendant misinterpreted the law in trying to set aside his modified sentence of probation. If that sentence had been determined to be illegal under former Miss. Code Ann. § 47-7-33(1), which prohibited a sentencing judge from suspending a sentence or placing a convicted felon on probation, the trial court's earlier sentencing order in which he was given jail time would have taken effect; defendant was not entitled to postconviction relief where he had pled guilty and later received a more lenient modified sentence, and in any event, his action was time barred pursuant to Miss. Code Ann. § 99-39-5. Wallace v. State, 906 So. 2d 841 (Miss. Ct. App. 2004).

Defendant argued that the circuit court gave him an illegal sentence by including a period of suspended time and a period of postrelease probation in his sentence; however, a defendant could not stand mute when he was handed an illegal sentence that was more favorable than what the legal sentence would have been, reap the favorable benefits of that illegal sentence, and later claim to have been prejudiced as a result thereof. Jones v. State, 881 So. 2d 351 (Miss. Ct. App. 2004).

Defendant benefitted from the leniency of the trial court's ordering him to serve a 10-year suspended sentence, and because he was not subjected to an undue burden or prejudice but to a significantly lesser sentence, the error by the trial court was harmless, and his 10-year sentence did not constitute an illegal sentence. Alexander v. State, 879 So. 2d 512 (Miss. Ct. App. 2004).

Under Miss. Code Ann. § 99-15-26, if defendant successfully completes certain court-imposed conditions, the cause against defendant is dismissed and the case closed. As a result, a conditional dismissal pursuant to § 99-15-26 is different than a suspended sentence pursuant to Miss. Code Ann. § 47-7-33; consequently, defendant, who pled guilty and received a suspended sentence was not entitled to have the conviction expunged under Miss. Code Ann. § 99-15-26. Turner v. State, 876 So. 2d 1056 (Miss. Ct. App. 2004).

Defendant was sentenced to five years of actual incarceration followed by five years of post-release supervision, with no portion of defendant's sentence suspended. In defendant's action for postconviction relief, contesting the requirement for post release supervision, defendant confused Miss. Code Ann. § 47-7-33 (convicted felons ineligible for a suspended sentence), with Miss. Code Ann. § 47-7-34(1), which was the provision for post-release supervision; under § 47-7-34(1) convicted felons were eligible to receive post-release supervision. Hunt v. State, 874 So. 2d 448 (Miss. Ct. App. 2004).

When the court exercises its authority to suspend the execution of a portion of a defendant's sentence, the normal course of procedure is to (1) impose a sentence, (2) determine what portion is to be suspended, (3) impose a period of probation, and (4) specify the terms and conditions upon which the probation/suspended sentence is contingent; if at any time during the period of probation it is determined that the probationer violated any of the specified conditions of his or her probation, the court has the authority to revoke any part or all of the probation or any part or all of the suspended sentence, as if the decision to suspend the sentence and place the defendant on probation had never been made. Artis v. State, 643 So. 2d 533 (Miss. 1994).

While § 47-7-33 does not expressly authorize the suspension of a sentence in part, the greater power to suspend entirely the execution of a sentence includes the lesser power to suspend in part the execution of a sentence. Moore v. State, 585 So. 2d 738 (Miss. 1991).

Contention was rejected that § 47-7-33 provided exclusive procedure in that suspension of sentence under its term could not be combined with requirement that any part of same sentence be served. Marshall v. Cabana, 835 F.2d 1101 (5th Cir. 1988).

Code 1942, § 4004-23 gives circuit and county courts power to (1) suspend the imposition of sentence or (2) suspend the execution of sentence. Leonard v. State, 271 So. 2d 445 (Miss. 1973).

At the time a defendant is convicted of a crime the court may elect not to impose a sentence but rather to suspend imposition of a sentence and place such defendant on probation under Code 1942, § 4004-23. Leonard v. State, 271 So. 2d 445 (Miss. 1973).

Where the trial court elects to suspend imposition of a sentence, during the period of probation, Code 1942, § 4004-23 continues to vest in the court power subsequently, in the event of a violation of the terms of defendant's probation, to impose any sentence which originally could have been imposed. Leonard v. State, 271 So. 2d 445 (Miss. 1973).

Once a circuit or county court exercises its option to impose a definite sentence it cannot subsequently set that sentence aside and impose a greater sentence. Leonard v. State, 271 So. 2d 445 (Miss. 1973).

2. Construction.

When a suspended sentence and supervised probation are properly imposed upon a first-offender under the provisions of Miss. Code Ann. § 47-7-33, the period of supervision by the Mississippi Department of Corrections is limited to a maximum period of five years. Carroll v. State, 3 So. 3d 767 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 1280, 2009 Miss. LEXIS 97 (Miss. 2009).

Miss. Code Ann. § 47-7-33 prohibits the imposition of a suspended sentence and supervised probation on a prior convicted felon; however, this statute does not prohibit the imposition of a suspended sentence, in whole or in part, upon a prior convicted felon, so long as the sentence does not involve a period of supervised probation and does not exceed the maximum penalty statutorily prescribed for the felony offense committed. Carroll v. State, 3 So. 3d 767 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 1280, 2009 Miss. LEXIS 97 (Miss. 2009).

Sentencing court did not violate Miss. Code Ann. § 47-7-33 in suspending part of an inmate's sentence where case law established that courts had the power to suspend a convicted felon's sentence under that statute. Duhart v. State, 981 So. 2d 1056 (Miss. Ct. App. 2008).

The Supreme Court of Mississippi returns the legislatively intended sentencing discretion to Mississippi's trial courts by clarifying that (1) Miss. Code Ann. § 47-7-33 prohibits the imposition of a suspended sentence and supervised probation on a prior convicted felon; however, this statute does not prohibit the imposition of a suspended sentence, in whole or in part, upon a prior convicted felon, so long as the sentence does not involve a period of supervised probation and does not exceed the maximum penalty statutorily prescribed for the felony offense committed; (2) when a suspended sentence and supervised probation are properly imposed upon a first-offender under the provisions of § 47-7-33, the period of supervision by the Mississippi Department of Corrections is limited to a maximum period of five years; (3) Miss. Code Ann. § 47-7-34 does not prohibit the imposition of post release supervision upon a prior convicted felon, nor does the statute limit the period of post-release supervision to a period of five years; but instead, the period of post release supervision is limited only to the number of years, which when added to the total period of incarceration, would not exceed the maximum penalty statutorily prescribed for the felony offense committed; and, (4) importantly, the statutory limitation of five years applies only to that maximum period of postrelease supervision which may be served under the supervision of the Mississippi Department of Corrections. To the extent that the court's decision in Goss v. State, 721 So.2d 144 (Miss. 1998) is in conflict with its decision, Goss is expressly overruled. Johnson v. State, 925 So. 2d 86 (Miss. 2006).

Pursuant to Miss. Code Ann. § 97-3-79, a person found guilty of armed robbery had to be imprisoned for life in the state penitentiary if the penalty was so fixed by the jury. Defendant, however, was sentenced by the circuit judge after entering a plea of guilty, and Miss. Code Ann. § 97-3-79 did not provide for a maximum sentence of life for armed robbery when the sentence was imposed by a judge rather than a jury; thus, where defendant had no prior felonies, and contrary to the State's argument that defendant's sentence was illegal, the circuit judge had the statutory authority, pursuant to Miss. Code Ann. § 47-7-33, to suspend defendant's sentence (in the case at bar, 9 years of defendant's 10-year sentence was suspended, subject to a term of supervised probation), to the extent that the ends of justice and the best interest of the public, as well as defendant, would be served thereby. State v. Hayes, 887 So. 2d 184 (Miss. Ct. App. 2004).

Where a trial court sentenced defendant to a term of one year in the Mississippi Department of Corrections (MDOC), followed by supervised probation under the supervision of the MDOC for a period of 10 years, a court of appeals erred in reversing the sentence because it was clear that the trial court was placing defendant on probation, only five years of which would be served under the supervision of the MDOC, the remaining five years being in essence "unsupervised probation." Thus, the sentence did not violate Miss. Code Ann. §§ 47-7-33, 47-7-34, or 47-7-37. Miller v. State, 875 So. 2d 194 (Miss. 2004).

At least two major differences between Miss. Code Ann. § 47-7-33 and Miss. Code Ann. § 47-7-34 are: (1) supervised probation may not be imposed on a convicted felon, while postrelease supervision may; and (2) supervised probation is limited to five years, while postrelease supervision is not. Miller v. State, 875 So. 2d 194 (Miss. 2004).

Probation under this section is a conditional term that is not a part of the prison sentence and is therefore not subject to the "totality" of sentence concept found in § 47-7-34. Carter v. State, 754 So. 2d 1207 (Miss. 2000).

The code provisions for suspension of sentence are to be construed as in pari materia with those respecting terms and conditions of probation. Jackson v. Waller, 248 Miss. 166, 156 So. 2d 594 (1963), error overruled, 248 Miss. 172, 160 So. 2d 184 (1964).

3. Applicability.

Where defendant, a prior convicted felon, was sentenced to 30 years and was ordered to serve 26 months in incarceration with the remainder of the sentence suspended and four years of post-release supervision, defendant was not placed on probation, and the trial court lawfully placed conditions on the suspended sentence. Because the combined periods of incarceration and post-release supervision did not exceed the maximum penalty statutorily proscribed for the felony offense committed and the trial court imposed a sentence within the statutory guidelines, the sentence was not illegal under Miss. Code Ann. § 47-7-33 or § 47-7-34. Goudy v. State, 996 So. 2d 185 (Miss. Ct. App. 2008).

Movant's 30-year suspended sentence was not an illegal sentence because Miss. Code Ann. § 47-7-33(1) did prohibit convicted felons from receiving suspension and then being placed on probation, but there was no probibition against receiving a flat suspended sentence. Watts v. State, 1 So. 3d 886 (Miss. Ct. App. 2008), writ of certiorari dismissed by 999 So. 2d 852, 2009 Miss. LEXIS 33 (Miss. 2009), writ of certiorari denied by 999 So. 2d 1280, 2009 Miss. LEXIS 16 (Miss. 2009).

Trial court did not abuse its discretion in denying defendant's motion to reconsider a 10-year prison sentence for the sale of crack cocaine; under Miss. Code

Ann. § 47-7-33(1), the trial court had no jurisdiction to suspend the execution of defendant's sentence because defendant had already begun to serve the sentence. McGee v. State, 976 So. 2d 954 (Miss. Ct. App. 2008).

Inmate argued that he could not be given a suspended sentence and probation for his burglary of a dwelling conviction; however, under Miss. Code Ann. § 47-7-33, trial courts have the authority to suspend, in whole or in part, a convicted felon's sentence, and thus the inmate's suspended sentence as ordered by the trial court was not in error and was affirmed. Craft v. State, 955 So. 2d 384 (Miss. Ct. App. 2006).

Rather than having 32 years of his 40-year sentence suspended, had the trial court been aware of his previous felony, the inmate would have received the entire sentence pursuant to Miss. Code Ann. § 47-7-33(1). The inmate received one-fifth of the sentence that should have been imposed; this could hardly be said to constitute cruel and unusual punishment. Black v. State, 902 So. 2d 612 (Miss. Ct. App. 2004), writ of certiorari denied by 901 So. 2d 1273, 2005 Miss. LEXIS 333 (Miss. 2005).

Court erred in suspending a portion of defendant's sentence for conspiracy to manufacture methamphetamine upon his guilty plea because he was a prior convicted felon and this being so, the court did not have the statutory authority to suspend the imposition or execution of his sentence. Sweat v. State, 910 So. 2d 12 (Miss. Ct. App. 2004), affirmed in part and reversed in part by 912 So. 2d 458, 2005 Miss. LEXIS 661 (Miss. 2005).

Defendant, as a convicted felon, could not quietly enjoy the benefits of an illegally lenient sentence and later attack the sentence when suddenly it was in his interest to do so; because defendant actually benefited from the illegal sentence, he was not denied his fundamental right from an illegal sentence, and there was no ineffective assistance of counsel or other error. Thomas v. State, 861 So. 2d 371 (Miss. Ct. App. 2003).

Prisoner pleaded guilty to an indictment for the sale of cocaine and was sentenced to 10 years in the custody of the Mississippi Department of Corrections. The judgment of sentence directed that the prisoner serve only the first five years of the sentence and that the final five years be suspended and the prisoner be placed on supervised probation for that period. The prisoner argued that the supervised probation portion of his sentence was illegal under Miss. Code Ann. § 47-7-33(1) because he had been convicted of a prior felony. The court held that the sentence was enforceable because the prisoner had voluntarily accepted it as a result of a plea bargain. Crosby v. State, 858 So. 2d 219 (Miss. Ct. App. 2003).

Even though Miss. Code Ann. § 47-7-33(1) prohibited suspension of defendant's sentence because defendant had a prior felony conviction, it was within the trial court's discretion to suspend defendant's sentence as set out in the plea agreement; defendant's complaint that defendant had received an impermissibly lenient sentence and then, by defendant's own subsequent action, squandered the benefit of that undeserved lenience, did not warrant postconviction relief. Clark v. State, 858 So. 2d 882 (Miss. Ct. App. 2003).

Defendant, as a prior convicted felon, was not eligible to receive probation on that prior conviction, but the fact that he received an impermissibly lenient sentence on his prior conviction did not mean he could argue in his petition for postconviction relief that the entry of the invalid sentence entitled him to postconviction relief as defendant's own conduct in committing a forgery was the reason for the revocation and relief could not be granted based on his own misconduct. Robinson v. State, — So. 2d —, 2002 Miss. App. LEXIS 96 (Miss. Ct. App. Feb. 26, 2002).

Code 1942, § 4004-23, giving the judges of the circuit and county courts power to suspend sentence and place defendants on probation, is not applicable to the matter of mandatory disbarment of an attorney upon his conviction of a felony. Bennett v. State, 211 So. 2d 520 (Miss. 1968), appeal dismissed, cert. denied, 393 U.S. 320, 89 S. Ct. 555, 21 L. Ed. 2d 515 (1969).

The power of a circuit judge to suspend sentence does not empower him to suspend the order of disbarment of an attorney found guilty of a felony, for the disbarment order, though a part of the punishment, is not a part of the sentence. Bennett v. State, 211 So. 2d 520 (Miss. 1968), appeal dismissed, cert. denied, 393 U.S. 320, 89 S. Ct. 555, 21 L. Ed. 2d 515 (1969).

4. Time to suspend or to amend sentence; relation to appeal.

Commission on Judicial Performance had jurisdiction to consider misconduct allegations against judge, based on judge's alleged release of inmates from department of corrections after judge had lost jurisdiction to do so, notwithstanding rule providing that Commission may not consider claim based on judge's act of making findings of fact, reaching legal conclusion, or applying law as judge understands it absent fraud, corrupt motive, or bad faith; evidence supported finding that judge acted in bad faith where caselaw at relevant time clearly held that circuit judge had no authority to suspend inmates' sentences. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

If no appeal from conviction is perfected and defendant begins to serve sentence imposed, time has passed for trial judge to suspend sentence under statute giving court authority to suspend sentence, and, if case is appealed to Supreme Court and is affirmed, there is no authority in circuit court or Supreme Court, following issuance of mandate affirming case, to modify judgment and sentence theretofore imposed. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

When sentencing order contains unequivocal provision that execution of sentence is suspended for 3 years and where time limitation within order goes unchallenged until after 3 year suspension period has expired, court has no authority to correct clerical error in order changing 3 year period of suspension to 5 year period intended by judge at time of sentencing. Sisson v. State, 483 So. 2d 1338 (Miss. 1986).

Since the court must elect at the time of imposition of sentence to simultaneously suspend imposition or execution of the sentence, a trial court is without authority, in accordance with § 47-7-33, to suspend a term of two years after the defendant has begun serving the sentence. Payne v. State, 462 So. 2d 902 (Miss. 1984).

A trial court is without authority to suspend the execution of a sentence after it has been affirmed by the Supreme Court; if no appeal is perfected and the defendant begins to serve the sentence imposed, the time has passed for the trial judge to suspend the sentence under § 47-7-33. Lambert v. Lambert, 394 So. 2d 895 (Miss. 1981).

Once a circuit or county court exercises its option to impose a definite sentence it cannot subsequently set that sentence aside and impose a greater sentence. Leonard v. State, 271 So. 2d 445 (Miss. 1973).

5. Revocation of suspension or probation.

Motion for post-conviction relief, which challenged the revocation of a petitioner's post-release supervision and suspended sentence, was properly denied; petitioner was not given an illegal suspended sentence because Miss. Code Ann. § 47-7-33 provided that a circuit court had the power to suspend the imposition or execution of sentence and to place a defendant on probation except when the defendant previously was convicted of a felony. Reese v. State, 21 So. 3d 625 (Miss. Ct. App. 2008).

Defendant was not considered a habitual offender for sentencing purposes, and his sentence could not be considered "mandatory" under Miss. Code Ann. § 47-7-47(2)(c); therefore, defendant was eligible for earned probation, and suspension of a convicted felon's sentence was proper and under the sound discretion of the trial court due to the passage of Miss. Code Ann. § 47-7-34; circuit and county courts had the power to suspend sentences for prior convicted felons that would have been considered illegal under § 47-7-33(1). Campbell v. State, 993 So. 2d 413 (Miss. Ct. App. 2008).

Appellant's argument that the circuit court did not have the authority to partially or wholly suspend any portion of his sentence under Miss. Code Ann. § 47-7-33 (Rev. 2002), since he had prior felony convictions failed because appellant could not reap the benefits of the illegal sentence, which was lighter than what the legal sentence would have been, and then turn around and attack the legality of the illegal, lighter sentence when it served his interest to do so. Thornhill v. State, 919 So. 2d 238 (Miss. Ct. App. 2005).

Probation under Miss. Code Ann. § 47-7-33 was a conditional term that was not part of the prison sentence and was therefore not subject to the totality of sentence concept found in Miss. Code Ann. § 47-7-34; defendant's five-year probation period would not be added to her original twenty-year sentence for aggravated assault when calculating time to be served, and reinstating the full original sentence therefore would not violate the statutory maximum for her crime as set forth in Miss. Code Ann. § 97-3-7. Miller v. State, 879 So. 2d 1050 (Miss. Ct. App. 2004), writ of certiorari denied by 887 So. 2d 183, 2004 Miss. LEXIS 1347 (Miss. 2004).

A defendant who wishes to challenge the revocation of his probation need not pursue the administrative remedies set out in Miss. Code Ann. § 47-5-803, as only a court can continue or revoke a defendant's probation. Rodriguez v. State, 839 So. 2d 561 (Miss. Ct. App. 2003).

Evidence that defendant failed to make restitution payments and engaged in continuing misconduct while on probation for aggravated assault supported trial court's decision to revoke probation and impose the remaining 11 years of defendant's 12-year sentence; defendant was not denied due process and the sentence was not excessive. Rodriguez v. State, 839 So. 2d 561 (Miss. Ct. App. 2003).

A court must base its revocation of a suspended sentence on a violation of the clear terms and conditions of the suspended sentence; due process requires that the trial judge at least orally inform the defendant of the terms and conditions upon which his or her suspended sentence is contingent before it may be properly revoked for the violation of those terms and conditions. Artis v. State, 643 So. 2d 533 (Miss. 1994).

Defendant's petition for habeas corpus was properly denied following his conviction of forgery upon a guilty plea, the suspension of his sentence and his placement on probation, and the subsequent revocation of the suspension and probation upon the prosecution's discovery of his prior out of state conviction of a felony, where, though defendant contended the prosecutor was aware of the felony conviction at the time he recommended probation, evidence on the issue was conflicting, where the court had jurisdiction over defendant at the time probation was granted and when it was revoked, and where defendant had misled the court by replying to a question, put to him before acceptance of his guilty plea, that his only prior offense had been a traffic ticket. Hamlin v. Barrett, 335 So. 2d 898 (Miss. 1976).

6. Propriety of particular sentences — Timeliness of petition for.

Motion for post-conviction relief was properly dismissed based on an allegation that an illegal sentence of house arrest was imposed under Miss. Code Ann. § 47-5-1003 due to defendant's prior convictions because defendant had benefitted from any error. Jefferson v. State, 958 So. 2d 1276 (Miss. Ct. App. 2007).

Defendant's sentence was valid and non-modifiable where he was ordered to serve 15 years in the custody of the Mississippi Department of Corrections (MDOC), with seven years to be served by actual incarceration, and the remaining eight years to be suspended and served by way of post-release supervision under Miss. Code Ann. § 47-7-34, with five of the eight years to be served in accordance with "probation-like" terms under the supervision of the MDOC, under Miss. Code Ann. § 47-7-34 and Miss. Code Ann. § 47-7-35. The appellate court ignored the clear intention of the circuit court to order a 15-year sentence, and this intention was appropriately accomplished under Miss. Code Ann. § 47-7-34. Johnson v. State, 925 So. 2d 86 (Miss. 2006).

Defendant asserted that under Miss. Code Ann. § 47-7-33, a prior convicted felon could not be given a suspended sentence. However, that information did not appear in the indictment or the record, and in fact, he received a very favorable sentence considering the sentencing options available for his offense of the sale of cocaine; thus, where he stood mute at sentencing, he could not later claim prejudice or that plea counsel was ineffective and his petition for post-conviction relief was properly denied. Ruff v. State, 910 So. 2d 1160 (Miss. Ct. App. 2005).

Defendant's petition for post-conviction relief from his conviction of sexual battery was properly denied because although defendant had two prior convictions and was not entitled to a suspended sentence as provided in Miss. Code Ann. § 47-7-33, defendant did not plead guilty as a result of an offer of a suspended sentence and he benefited from the illegal sentence since it was more lenient than the one he should have received, therefore he did not suffer any fundamental unfairness from the illegal sentence. Myers v. State, 897 So. 2d 198 (Miss. Ct. App. 2004).

Inmate argued that the sentence imposed by the trial court was improper; it was the inmate's contention that the trial court was without authority under Miss. Code Ann. § 47-7-33 to suspend any portion of his sentence, as he was a priorly convicted felon. However, to hold that the inmate's sentence was improper would allow him and other criminal defendants the ability to conceal prior convictions, accept the sentence imposed by the trial court, and then have a free pass to overturn that sentence if it did not meet his expectations. Black v. State, 902 So. 2d 612 (Miss. Ct. App. 2004), writ of certiorari denied by 901 So. 2d 1273, 2005 Miss. LEXIS 333 (Miss. 2005).

Imposition of partially suspended sentence upon defendant being convicted of robbery pursuant to a guilty plea was illegal because defendant had a prior felony conviction which rendered defendant ineligible for such a sentence; defendant was not, however, entitled to out-of time relief from the conviction based upon the illegal sentence because defendant had received the benefit of the illegal sentence and did not challenge the illegal sentence until the conviction was used to enhance defendant's sentence in a subsequent robbery case. Edwards v. State, 839 So. 2d 578 (Miss. Ct. App. 2003).

Defendant benefitted from the illegal sentence since it was a more lenient one than he was entitled to receive; therefore defendant suffered no fundamental unfairness from the illegal sentence, and his fundamental rights were not violated. Pruitt v. State, 846 So. 2d 271 (Miss. Ct. App. 2002), writ of certiorari denied by 846 So. 2d 229, 2003 Miss. App. LEXIS 538 (Miss. Ct. App. 2003), writ of certiorari denied by 540 U.S. 957, 124 S. Ct. 410, 157 L. Ed. 2d 294, 2003 U.S. LEXIS 7592, 72 U.S.L.W. 3267 (2003).

Where the defendant had a prior felony conviction, the trial court did not have authority to impose a suspended sentence following the defendant's guilty plea. Weaver v. State, 785 So. 2d 1085 (Miss. Ct. App. 2001).

The defendant's initial sentence, pursuant to the plea agreement, was illegal because the circuit court ordered a partially suspended sentence even though the defendant had a prior felony conviction. Cooper v. State, 737 So. 2d 1042 (Miss. Ct. App. 1999).

A trial court did not have the authority to follow the State's recommendation and impose a suspended sentence where the defendant had previously been convicted of a felony, and therefore the sentence was invalid, since § 47-7-33 does not permit the suspension of a sentence and probation where the defendant has a prior felony conviction. Robinson v. State, 585 So. 2d 757 (Miss. 1991).

Judge acted within his discretion when he modified defendant's 25 year sentence to 3 years in prison followed by 5 years probation; contention was rejected that § 47-7-33 provided exclusive procedure in that suspension of sentence under its term could not be combined with requirement that any part of same sentence be served. Marshall v. Cabana, 835 F.2d 1101 (5th Cir. 1988).

A trial judge was in error when he sentenced a defendant to 14 years in the state penitentiary with 7 years suspended if the appellant paid a $125,000 fine, since such a sentence is "indefinite" and thus violates § 47-7-33. Arnett v. State, 532 So. 2d 1003 (Miss. 1988).

Sentence was neither excessive nor beyond the court's authority which required the defendant, who was convicted of a violation of § 97-3-19, to serve 30 days in the county jail, perform 60 days of community work, pay costs of special election, and pay costs of trial, as conditions for the suspension of a one year sentence and 2 years of probation. Fanning v. State, 497 So. 2d 70 (Miss. 1986).

7. — Convicted felons.

Inmate's sentence was not illegal under Miss. Code Ann. § 47-7-33(1) because he was a convicted felon and was given a suspended sentence as the state's highest court had clarified that the circuit and county courts had the power to suspend a convicted felon's sentence under § 47-7-33 inasmuch as the state's highest court and the Mississippi legislature had empowered them to do so under Miss. Code Ann. § 47-7-34 and to the extent that the practice had been historically ingrained in the Mississippi's criminal courts' sentencing practices. Ivy v. State, — So. 3d —, 2012 Miss. App. LEXIS 800 (Miss. Ct. App. Dec. 11, 2012).

Although circuit judge apparently believed, based on Miss. Code Ann. § 47-7-33(1) that he could not suspend any portion of defendant's sentence, due to a prior felony, Miss. Code Ann. § 47-7-34 did not prohibit the imposition of post-release supervision upon a previously convicted felon. Wade v. State, 33 So. 3d 498 (Miss. Ct. App. 2009).

Appellant inmate's motion for post-conviction relief was properly denied because, inter alia, an argument that the inmate was not given a valid term of post-supervision release based on his status as a convicted felon was rejected; the inmate's sentence was suspended under Miss. Code Ann. § 47-7-34, not under Miss. Code Ann. § 47-7-33. Garner v. State, 21 So. 3d 629 (Miss. Ct. App. 2008), writ of certiorari dismissed by 2009 Miss. LEXIS 571 (Miss. Nov. 19, 2009).

In a business burglary case, denial of post-conviction relief was proper because, although Although Miss. Code Ann. § 47-7-33 limited the power of the trial court to suspend a sentence and order probation for previously convicted felons, any error in sentencing the petitioner was harmless as he was given a lenient sentence; he was indicted as a habitual offender with two prior felonies, but he was ultimately sentenced as a non-habitual offender. Sago v. State, 978 So. 2d 1285 (Miss. Ct. App. 2008).

Appellate court affirmed the denial of an inmate's petition for post-conviction relief; the inmate was not illegally sentenced, because as a prior felon, he was not entitled to a suspended sentence under Miss. Code Ann. § 47-7-33(1). Berry v. State, 924 So. 2d 624 (Miss. Ct. App. 2006).

Because defendant did not receive a suspended sentence, his sentence was not illegal under Miss. Code Ann. § 47-7-33(1) (Rev. 2004), and therefore his petition for post-conviction relief was properly dismissed as untimely, as it was not filed until March 2005; under Miss. Code Ann. § 99-39-5(2), defendant only had until June 5, 2003, to file his motion for post-conviction relief, and two years' incarceration plus one year of supervision did not exceed 15 years, the maximum sentence for uttering a forgery. King v. State, 929 So. 2d 373 (Miss. Ct. App. 2006).

Appellant entered a guilty plea to armed robbery, the court accepted the State's recommendation and sentenced him to twenty-five years with three years to serve, twenty-two years suspended. While appellant was not entitled to a suspended sentence as a convicted felon, he benefitted from his illegally lenient sentence, and could not obtain postconviction relief. Weathersby v. State, 919 So. 2d 262 (Miss. Ct. App. 2005).

ATTORNEY GENERAL OPINIONS

There is no apparent authority to suspend or otherwise alter definite sentence already imposed, even in event of jail overcrowding. Sheffield, Oct. 28, 1992, A.G. Op. #92-0812.

Because it is mandatory that defendant's probation be under supervision of Department of Corrections, circuit judge may not establish local probation program outside statutory probation system supervised by Department of Corrections. Dyson, Dec. 16, 1992, A.G. Op. #92-875.

Section 47-7-33 does not empower circuit judges to suspend sentences pursuant to Section 97-3-65(2)(c) and Section 97-3-101(3) because the latter sections each provide that a life sentence is the maximum sentence that may be imposed. Caranna, May 5, 2000, A.G. Op. #2000-0239.

RESEARCH REFERENCES

ALR. Defendant's right to disclosure of presentence report. 40 A.L.R.3d 681.

State court's power to place defendant on probation without imposition of sentence. 56 A.L.R.3d 932.

Inherent power of court to suspend for indefinite period execution of sentence in whole or in part. 73 A.L.R.3d 474.

Governmental tort liability for injuries caused by negligently released individual. 6 A.L.R.4th 1155.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 A.L.R.4th 722.

Right of convicted defendant to refuse probation. 28 A.L.R.4th 736.

Propriety of conditioning probation on defendant's submission to polygraph or other lie detector testing. 86 A.L.R.4th 709.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing "First Offenders" and "Innocent Persons," Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi,* Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

§ 47-7-33.1. Pre-release assessment and written discharge plan.

(1) The department shall create a discharge plan for any offender returning to the community, regardless of whether the person will discharge from the custody of the department, or is released on parole, pardon, or otherwise. At least ninety (90) days prior to an offender's earliest release date, the commissioner shall conduct a pre-release assessment and complete a written discharge plan based on the assessment results. The discharge plan for parole eligible offenders shall be sent to the parole board at least thirty (30) days prior to the offender's parole eligibility date for approval. The board may suggest changes to the plan that it deems necessary to ensure a successful transition.

(2) The pre-release assessment shall identify whether an inmate requires assistance obtaining the following basic needs upon release: transportation, clothing and food, financial resources, identification documents, housing, employment, education, health care and support systems. The discharge plan shall include information necessary to address these needs and the steps being taken by the department to assist in this process. Based on the findings of the assessment, the commissioner shall:

(a) Arrange transportation for inmates from the correctional facility to their release destination;

(b) Ensure inmates have clean, seasonally appropriate clothing, and provide inmates with a list of food providers and other basic resources immediately accessible upon release;

(c) Ensure inmates have a driver's license or a state-issued identification card that is not a Department of Corrections identification card;

(d) Assist inmates in identifying safe, affordable housing upon release. If accommodations are not available, determine whether temporary housing is available for at least ten (10) days after release. If temporary housing is not available, the discharge plan shall reflect that satisfactory housing has not been established and the person may be a candidate for transitional reentry center placement;

(e) Refer inmates without secured employment to employment opportunities;

(f) Provide inmates with contact information of a health care facility/provider in the community in which they plan to reside;

(g) Notify family members of the release date and release plan, if inmate agrees; and

(h) Refer inmates to a community or a faith-based organization that can offer support within the first twenty-four (24) hours of release;

(3) A written discharge plan shall be provided to the offender and supervising probation officer or parole officer, if applicable.

(4) A discharge plan created for a parole-eligible offender shall also include supervision conditions and the intensity of supervision based on the assessed risk to recidivate and whether there is a need for transitional housing. The board shall approve discharge plans before an offender is released on parole pursuant to this chapter.

SOURCES: Laws, 2014, ch. 457, § 48, eff from and after July 1, 2014.

Cross References — Pre-release assessment and discharge plan defined, see § 47-7-2.

§ 47-7-34. Postrelease supervision program.

(1) When a court imposes a sentence upon a conviction for any felony committed after June 30, 1995, the court, in addition to any other punishment imposed if the other punishment includes a term of incarceration in a state or local correctional facility, may impose a term of post-release supervision. However, the total number of years of incarceration plus the total number of years of post-release supervision shall not exceed the maximum sentence authorized to be imposed by law for the felony committed. The defendant shall be placed under post-release supervision upon release from the term of incarceration. The period of supervision shall be established by the court.

(2) The period of post-release supervision shall be conducted in the same manner as a like period of supervised probation, including a requirement that the defendant shall abide by any terms and conditions as the court may establish. Failure to successfully abide by the terms and conditions shall be grounds to terminate the period of post-release supervision and to recommit the defendant to the correctional facility from which he was previously released. Procedures for termination and recommitment shall be conducted in the same manner as procedures for the revocation of probation and imposition of a suspended sentence as required pursuant to Section 47-7-37.

(3) Post-release supervision programs shall be operated through the probation and parole unit of the Division of Community Corrections of the department. The maximum amount of time that the Mississippi Department of Corrections may supervise an offender on the post-release supervision program is five (5) years.

SOURCES: Laws, 1995, ch. 596, § 9; Laws, 2000, ch. 622, § 4; Laws, 2002, ch. 624, § 6; Laws, 2014, ch. 457, § 57, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added "as required pursuant to Section 47-7-37" to the end of (2)

JUDICIAL DECISIONS

1. In general.
2. Revocation.
3. Construction.
4. Double jeopardy.
5. Propriety of particular sentences.

1. In general.

Although circuit judge apparently believed, based on Miss. Code Ann. § 47-7-33(1) that he could not suspend any portion of defendant's sentence, due to a prior felony, Miss. Code Ann. § 47-7-34 does not prohibit the imposition of post-release supervision upon a previously convicted felon. Wade v. State, 33 So. 3d 498 (Miss. Ct. App. 2009).

Because it was within the trial court's discretion under Miss. Code Ann. § 47-7-34 whether to impose a term of post-release supervision, no error could be found in the court's failure to impose such supervision in sentencing a defendant for armed robbery. Waddell v. State, 999 So. 2d 375 (Miss. Ct. App. 2008).

Motion for post-conviction relief was denied in a case where defendant's suspended sentence for statutory rape was revoked because he waived issues relating to a speedy trial and defects in an evidence sample due to a guilty plea, there was no evidence that an indictment was manufactured, and the revocation of the suspended sentence was permitted under Miss. Code Ann. §§ 47-7-34 and 47-7-37 where defendant had already served a portion of a five-year sentence after the guilty plea was entered. Davis v. State, 954 So. 2d 530 (Miss. Ct. App. 2007).

Appellate court affirmed the denial of the inmate's motion for post-conviction relief as the inmate acknowledged that recommended post-release supervision would be five years, and Miss. Code Ann. § 47-7-34 authorized post-release supervision of up to five years. Elliott v. State, 924 So. 2d 609 (Miss. Ct. App. 2006).

Defendant's sentence for armed robbery was proper; 20 years in prison, with 12 years suspended, followed by five years of post-release supervision, was within the sentencing range. The trial court had the authority to impose post-release supervision. Williams v. State, 922 So. 2d 853 (Miss. Ct. App. 2006).

In a manslaughter case, the trial court correctly dismissed defendant's motion for post-conviction relief as time-barred as she was not serving an illegal sentence; the combination of her 4 years of post-release supervision and 16 years incarceration resulted in a 20-year sentence, the permissible maximum sentence as per Miss. Code Ann. § 47-7-34. Brown v. State, 923 So. 2d 258 (Miss. Ct. App. 2006).

Inmate's sentence was not illegal where the sum of his term of imprisonment and term of supervised release did not exceed the maximum sentence allowed by statute for the felony committed. Epps v. State, 926 So. 2d 242 (Miss. Ct. App. 2005).

Where there was a conflict between the sentencing order and the commitment order, the sentencing order that stated that the inmate was to serve three years in prison and two years on supervised release controlled; thus, the five year sentence was valid under Miss. Code Ann. § 97-1-5 for his conviction of accessory after the fact to murder as it did not exceed the maximum sentence authorized to be imposed by the law for the felony committed. Fuller v. State, 914 So. 2d 1230 (Miss. Ct. App. 2005).

Where an inmate was sentenced for two counts of grand larceny and could have received a maximum sentence of ten years in the custody of Mississippi Department of Corrections, but instead, the trial court suspended five years of the ten year sentence, leaving five years of incarceration to serve, with two years of post-release supervision, the inmate's sentence was not illegal. Thus, the trial court properly denied the inmate's motion for post-conviction relief. Hill v. State, 912 So. 2d 494 (Miss. Ct. App. 2005).

Sentence was rendered on certiorari where the original sentencing order was incorrect and the inmate was convicted of manufacturing methamphetamine, pursuant to Miss. Code Ann. § 47-7-34. The inmate was a prior convicted felon and the appellate court could resentence him without remanding to the trial court because the sentencing error was caused by a misapplication of a sentencing statute; Miss. Code Ann. § 47-7-33 was inapplicable; the supreme court modified the trial court's sentence so that following his 8 years of incarceration, the inmate would be released to 12 years of post-release supervision but he was required to report to prison officials for only 5 years and the remaining 7 years would be unsupervised post-release supervision. Sweat v. State, 912 So. 2d 458 (Miss. 2005).

Where defendant had already served 18 months of his ten- year sentence, the trial court's order sentencing defendant to serve ten years upon his second violation of the terms of his postrelease supervision did exceed the authority of the court, which was only authorized to reinstate the remainder of defendant's original sentence. The maximum term remaining on defendant's sentence that could have been reinstated by the court was eight years and six months. Harvey v. State, 919 So. 2d 282 (Miss. Ct. App. 2005).

Court did not err in sentencing defendant to eight years in prison and 12 years post-release supervision after he was convicted of selling cocaine because the period of incarceration and post-release supervision did not exceed the maximum period of time allowed for the offense. Avant v. State, 896 So. 2d 379 (Miss. Ct. App. 2005).

Defendant argued that his sentence was contrary to Miss. Code Ann. § 47-7-34 because by failing to comply with the terms and conditions of postrelease supervision he could be required to serve a term exceeding the maximum term allowed under the statute; defendant's sentence totaling 15 years, specifically 10 years to serve with 5 years of postrelease supervision, was unquestionably in accord with Miss. Code Ann. § 97-21-33 as it was at the time of his sentencing, and, therefore, his sentence did not conflict with Miss. Code Ann. § 47-7-34. Kemp v. State, 904 So. 2d 1162 (Miss. Ct. App. 2004).

Defendant claimed that his sentence for an attempted armed robbery charge (10 years, with 5 suspended and 5 years of postrelease supervision), was in violation of Miss. Code Ann. § 47-7-33(1), which precluded probation for a convicted felon. From the record it was apparent that what the trial court intended, pursuant to Miss. Code Ann. § 47-7-34, was to sentence defendant to five years of actual confinement, and five years of postrelease supervision, and therefore, a remand for clarification of defendant's sentence was required. Thomas v. State, 883 So. 2d 1197 (Miss. Ct. App. 2004).

Incarceration and postrelease supervision up to five years is a permissible sentence for a felony, as long as the entire sentence is within the maximum prison term for the offense. The postrelease supervision period merges with the incarceration to form the total sentence. Johnson v. State, 924 So. 2d 527 (Miss. Ct. App. 2004), affirmed in part and reversed in part by 925 So. 2d 86, 2006 Miss. LEXIS 116 (Miss. 2006).

Defendant's status was one of post-release supervision, a status much like probation; the procedures for terminating such supervision were the same as the procedures for the revocation of probation under Miss. Code Ann. § 47-7-34(2), and because the revocation of post-release supervision followed the same procedure as for revocation of probation, it may not be directly appealed, and since the original revocation order may not be appealed, neither may the denial of a motion to reconsider that revocation. Massingille v. State, 878 So. 2d 252 (Miss. Ct. App. 2004).

Probation under Miss. Code Ann. § 47-7-33 was a conditional term that was not part of the prison sentence and was therefore not subject to the totality of sentence concept found in Miss. Code Ann. § 47-7-34; defendant's five-year probation period would not be added to her original twenty-year sentence for aggravated assault when calculating time to be served, and reinstating the full original sentence therefore would not violate the statutory maximum for her crime as set forth in Miss. Code Ann. § 97-3-7. Miller v. State, 879 So. 2d 1050 (Miss. Ct. App. 2004), writ of certiorari denied by 887 So. 2d 183, 2004 Miss. LEXIS 1347 (Miss. 2004).

Defendant's period of supervised release was not counted toward his time served; therefore, defendant's sentence of three years to serve, seven years suspended, and five years of post release supervision was within the ten years allowable pursuant to the embezzlement statute, Miss. Code Ann. § 97-23-19. Brown v. State, 872 So. 2d 96 (Miss. Ct. App. 2004).

Trial court committed plain error under Miss. R. Evid. 103(d) where it sentenced defendant, in part, to 10 years of post-release supervision, as under Miss. Code Ann. § 47-7-34, five years of post-release supervision was the maximum. Stigall v. State, 869 So. 2d 410 (Miss. Ct. App. 2003), writ of certiorari denied by 878 So. 2d 67, 2004 Miss. LEXIS 864 (Miss. 2004).

Defendant's sentence of 30 years of supervised probation was clearly in violation of Miss. Code Ann. § 47-7-34 because the maximum amount of time that the Mississippi Department of Corrections could supervise an offender on postrelease supervision was 5 years. Brooks v. State, 858 So. 2d 930 (Miss. Ct. App. 2003).

This section applies only to felonies, not misdemeanors. Conner v. State, 750 So. 2d 1258 (Miss. 2000).

This section creates a post-release supervision program that provides for a term of post-release supervision in addition to any term of incarceration imposed upon those already convicted of a felony; it is a legislative creation separate and distinct from probation as set out in § 47-7-33. Carter v. State, 754 So. 2d 1207 (Miss. 2000).

2. Revocation.

Probationer failed to show that the trial court acted outside its authority in revoking the probationer's post-release supervision because the evidence showed that the probationer was on post-release supervision, instead of parole, which was under the exclusive authority of the trial court. Boone v. State, — So. 3d —, 2014 Miss. App. LEXIS 100 (Miss. Ct. App. Feb. 25, 2014).

Based on the circuit court's failure to retain sentencing jurisdiction pursuant to Miss. Code Ann. § 47-7-47, its implied attempt to impermissibly delegate its authority to suspend part of the prisoner's 16-year sentence, and the fact that he did not have a revocation hearing, the circuit court's sentence was impermissibly indeterminate. Graham v. State, 85 So. 3d 860 (Miss. Ct. App. 2011), vacated by, remanded by 85 So. 3d 847, 2012 Miss. LEXIS 190 (Miss. 2012).

Because petitioner admitted in his waiver that he did, in fact, violate the terms of his post-release supervision by committing the offense of domestic violence on two occasions, the court had the authority under Miss. Code Ann. § 47-7-34(2) to revoke his post-release supervision. Williams v. State, 4 So. 3d 388 (Miss. Ct. App. 2009).

Defendant's post-release supervision was not illegally revoked based on his subsequent arrest and being charged with a felony. Campbell v. State, 993 So. 2d 413 (Miss. Ct. App. 2008).

3. Construction.

There is no language in Miss. Code Ann. § 47-7-34 that requires a circuit court to order a suspended sentence in addition to post-release supervision. McKinney v. State, 7 So. 3d 291 (Miss. Ct. App. 2008).

Motion for post-conviction relief, which challenged the revocation of a petitioner's post-release supervision and suspended sentence, was properly denied because the petitioner's argument that his suspended sentence was illegal was without merit;

the period of post-release supervision under Miss. Code Ann. § 47-7-34 was an alternative to probation that was available for prior convicted felons. Reese v. State, 21 So. 3d 625 (Miss. Ct. App. 2008).

Miss. Code Ann. § 47-7-34 does not prohibit the imposition of post-release supervision upon a prior convicted felon, nor does this statute limit the period of post-release supervision to a period of five years; instead, the period of post-release supervision is limited only to the number of years, which, when added to the total period of incarceration, would not exceed the maximum penalty statutorily prescribed for the felony offense committed. Importantly, the statutory limitation of five years applies only to that maximum period of post-release supervision that may be served under the supervision of the Mississippi Department of Corrections. Carroll v. State, 3 So. 3d 767 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 1280, 2009 Miss. LEXIS 97 (Miss. 2009).

The Supreme Court of Mississippi returns the legislatively intended sentencing discretion to Mississippi's trial courts by clarifying that (1) Miss. Code Ann. § 47-7-33 prohibits the imposition of a suspended sentence and supervised probation on a prior convicted felon; however, this statute does not prohibit the imposition of a suspended sentence, in whole or in part, upon a prior convicted felon, so long as the sentence does not involve a period of supervised probation and does not exceed the maximum penalty statutorily prescribed for the felony offense committed; (2) when a suspended sentence and supervised probation are properly imposed upon a first-offender under the provisions of § 47-7-33, the period of supervision by the Mississippi Department of Corrections is limited to a maximum period of five years; (3) Miss. Code Ann. § 47-7-34 does not prohibit the imposition of post release supervision upon a prior convicted felon, nor does the statute limit the period of post-release supervision to a period of five years; but instead, the period of post release supervision is limited only to the number of years, which when added to the total period of incarceration, would not exceed the maximum penalty statutorily prescribed for the felony offense committed; and, (4) importantly, the statutory limitation of five years applies only to that maximum period of post-release supervision which may be served under the supervision of the Mississippi Department of Corrections. To the extent that the court's decision in Goss v. State, 721 So.2d 144 (Miss. 1998) is in conflict with its decision, Goss is expressly overruled. Johnson v. State, 925 So. 2d 86 (Miss. 2006).

Petitioner was properly denied postconviction relief after he pled guilty to manslaughter by culpable negligence because he wrongfully read the post-release supervision statute. The statute applied to him because he was convicted of a felony committed after June 30, 1995; further, the statute did not distinguish between first time and repeat offenders. Oaks v. State, 912 So. 2d 1075 (Miss. Ct. App. 2005).

Post-release supervision, a legislative creation under Miss. Code Ann. § 47-7-34, was separate and distinct from probation, and a defendant's period of supervised release was not counted toward his time served. Richardson v. State, 907 So. 2d 404 (Miss. Ct. App. 2005).

Where defendant was sentenced to five years of incarceration, a 10-year suspended sentence, and five years post-release supervision, defendant's sentence was well within the statutory maximum of Miss. Code Ann. § 97-5-23 because a defendant's period of supervised release was not counted toward the defendant's time served. Hobson v. State, 910 So. 2d 1139 (Miss. Ct. App. 2005).

While Miss. Code Ann. § 47-7-34 limits to a period of five years the Mississippi Department of Corrections's authority to supervise an offender on post-release supervision, the limitation on the Department's authority to supervise does not limit to five years the period of post-release supervision which a trial judge may give to a prior-convicted felon. Mississippi Supreme Court has made it clear that a trial judge may sentence a prior-convicted felon to more than five years of post-release supervision, provided the period of incarceration and the period of post-release supervision do not exceed the maximum period of time allowed for the offense. Avant v. State, 896 So. 2d 379 (Miss. Ct. App. 2005).

Defendant was properly denied his motion for postconviction relief based on an allegedly illegal sentence where defendant was not convicted and given probation, but was convicted and given five years of postrelease supervision. Since the sentencing court complied with Miss. Code Ann. § 47-7-34 (2003) in ordering his sentence, denial of his motion for postconviction relief based on an illegal sentence was proper. Johnson v. State, 883 So. 2d 607 (Miss. Ct. App. 2004), writ of certiorari denied by 898 So. 2d 679, 2005 Miss. LEXIS 240 (Miss. 2005).

Where a trial court sentenced defendant to a term of one year in the Mississippi Department of Corrections (MDOC), followed by supervised probation under the supervision of the MDOC for a period of 10 years, a court of appeals erred in reversing the sentence because it was clear that the trial court was placing defendant on probation, only five years of which would be served under the supervision of the MDOC, the remaining five years being in essence "unsupervised probation." Thus, the sentence did not violate Miss. Code Ann. §§ 47-7-33, 47-7-34, or 47-7-37. Miller v. State, 875 So. 2d 194 (Miss. 2004).

At least two major differences between Miss. Code Ann. § 47-7-33 and Miss. Code Ann. § 47-7-34 are: (1) supervised probation may not be imposed on a convicted felon, while postrelease supervision may; and (2) supervised probation is limited to five years, while postrelease supervision is not. Miller v. State, 875 So. 2d 194 (Miss. 2004).

Defendant was sentenced to five years of actual incarceration followed by five years of post-release supervision, with no portion of defendant's sentence suspended. In defendant's action for post-conviction relief, contesting the requirement for post release supervision, defendant confused Miss. Code Ann. § 47-7-33 (convicted felons ineligible for a suspended sentence), with Miss. Code Ann. § 47-7-34(1), which was the provision for post-release supervision; under § 47-7-34(1) convicted felons were eligible to receive post-release supervision. Hunt v. State, 874 So. 2d 448 (Miss. Ct. App. 2004).

Trial court erred in imposing a 15-year post-release supervision term on one drug conviction as the maximum allowed for each crime was five years. Hill v. State, 865 So. 2d 371 (Miss. Ct. App. 2003).

Trial court properly sentenced defendant to a term of incarceration plus a term of post-release supervision where the term of incarceration and post-release supervision did not exceed the statutory maximum sentence for the felony committed, and the sentence did not offend the double jeopardy clause of the United States or Mississippi Constitutions. Kern v. State, 828 So. 2d 871 (Miss. Ct. App. 2002).

There is nothing in Miss. Code Ann. § 47-7-34 to support the notion that the five-year limitation is intended to limit post-release supervision to five years, regardless of how many felonies the defendant commits; however, for the crime of aggravated assault the trial court sentenced defendant to 4 years of incarceration and 11 years of post-release supervision, which exceeded the maximum amount of time one could be sentenced by statute to post-release supervision. Burnett v. State, 831 So. 2d 1216 (Miss. Ct. App. 2002), remanded by 2002 Miss. App. LEXIS 793 (Miss. Ct. App. Dec. 3, 2002).

Probationary period of defendant's sentence did not count in the calculation of defendant's sentence under Miss. Code Ann. § 47-7-34; therefore, defendant's sentence did not exceed the maximum allowable sentence as a result of the probationary period. Jones v. State, 805 So. 2d 610 (Miss. Ct. App. 2002).

Probation under § 47-7-33 is a conditional term that is not a part of the prison sentence and is therefore not subject to the "totality" of sentence concept found in this section. Miller v. State, 879 So. 2d 1050 (Miss. Ct. App. 2004), writ of certiorari denied by 887 So. 2d 183, 2004 Miss. LEXIS 1347 (Miss. 2004).

4. Double jeopardy.

Decision to revoke appellant's, an inmate's, probation was appropriate, but a remand to the trial court was necessary because the handwritten addendum to the revocation order caused the inmate's new sentence to exceed the five-year maximum sentence and the State conceded that the handwritten addendum imposing three years' post-release supervision, instead of two years, was a clerical error. Whitaker v. State, 22 So. 3d 326 (Miss. Ct. App. 2009).

Under the Fifth Amendment and Miss. Const. Art. 3, § 21, a trial court's imposition of defendant's original ten-year term after his second parole violation was not an unlawful extension or increase of his sentence in violation of his right against double jeopardy because, although the written sentencing order did not reflect the court's imposition of the ten-year sentence but merely that all but 18 months of that sentence were suspended, on two occasions defendant was clearly informed in open court that his sentence was for ten years. Harvey v. State, 919 So. 2d 282 (Miss. Ct. App. 2005).

Denial of post-conviction relief was affirmed because the reinstatement of a suspended sentence after the revocation of probation for drug use did not amount to double jeopardy. Britt v. State, 856 So. 2d 699 (Miss. Ct. App. 2003).

5. Propriety of particular sentences.

Inmate's sentence was not illegal under Miss. Code Ann. § 47-7-33(1) because he was a convicted felon and was given a suspended sentence as the state's highest court had clarified that the circuit and county courts had the power to suspend a convicted felon's sentence under § 47-7-33 inasmuch as the state's highest court and the Mississippi legislature had empowered them to do so under Miss. Code Ann. § 47-7-34 and to the extent that the practice had been historically ingrained in the Mississippi's criminal courts' sentencing practices. Ivy v. State, — So. 3d —, 2012 Miss. App. LEXIS 800 (Miss. Ct. App. Dec. 11, 2012).

Inmate's sentence did not violate Miss. Code Ann. § 47-7-34 where: (1) the inmate was sentenced to the maximum sentence for possession-of-cocaine of 16 years' under Miss. Code Ann. § 41-29-139(c)(1)(C); (2) the inmate was sentenced to the maximum sentence for child-endangerment of 10 years' under Miss. Code Ann. § 97-5-39(2)(b)(i); (3) 11 years of the 26-year sentence were suspended, leaving 15 years to serve; and (4) when the 5 years of post-release supervision were added to the 15 years to serve, the total was less than the maximum authorized sentence. Ivy v. State, — So. 3d —, 2012 Miss. App. LEXIS 800 (Miss. Ct. App. Dec. 11, 2012).

Denial of post-conviction relief to an inmate was error as under Miss. Code Ann. § 47-7-34, the circuit court had lacked jurisdiction to extend the inmate's term of post-release supervision (PRS) beyond the three-year maximum authorized by Miss. Code Ann. § 41-29-139(b)(3), and therefore, the inmate's PRS had expired before the circuit court revoked the inmate's suspended sentence for violation of the terms of the extended PRS. Allen v. State, 62 So. 3d 450 (Miss. Ct. App. 2011).

Appellant inmate's sentence did not fail to comply with Miss. Code Ann. § 47-7-34, because he was sentenced to twenty years, which was well within the statutory guidelines for possession with intent to distribute, and his term of incarceration plus his post-release supervision did not exceed the maximum sentence of thirty years as prescribed by Miss. Code Ann. § 41-29-139(b)(1). Burks v. State, 37 So. 3d 1219 (Miss. Ct. App. 2010).

Appellant inmate was not entitled to postconviction relief because, in part, he was not improperly sentenced to probation as he asserted; rather, his twenty-year sentence was suspended, and he was placed under post-release supervision pursuant to Miss. Code Ann. § 47-7-34. Burks v. State, 37 So. 3d 1219 (Miss. Ct. App. 2010).

Appellant inmate's sentence did not fail to comply with Miss. Code Ann. § 47-7-34, because he was sentenced to twenty years, which was well within the statutory guidelines for possession with intent to distribute, and his term of incarceration plus his post-release supervision did not exceed the maximum sentence of thirty years as prescribed by Miss. Code Ann. § 41-29-139(b)(1). Burks v. State, 37 So. 3d 1219 (Miss. Ct. App. 2010).

Where defendant, a prior convicted felon, was sentenced to 30 years and was ordered to serve 26 months in incarceration with the remainder of the sentence suspended and four years of post-release supervision, defendant was not placed on probation, and the trial court lawfully placed conditions on the suspended sentence. Because the combined periods of incarceration and post-release supervision did not exceed the maximum penalty statutorily proscribed for the felony offense committed and the trial court imposed a sentence within the statutory guidelines, the sentence was not illegal under Miss. Code Ann. § 47-7-33 or § 47-7-34. Goudy v. State, 996 So. 2d 185 (Miss. Ct. App. 2008).

Appellant inmate's motion for post-conviction relief was properly denied because, inter alia, an argument that the inmate was not given a valid term of post-supervision release based on his status as a convicted felon was rejected; the inmate's sentence was suspended under Miss. Code Ann. § 47-7-34, not under Miss. Code Ann. § 47-7-33. Garner v. State, 21 So. 3d 629 (Miss. Ct. App. 2008), writ of certiorari dismissed by 2009 Miss. LEXIS 571 (Miss. Nov. 19, 2009).

In a case where defendant was sentenced to eight years in prison with five years of post-release supervision after a guilty plea was entered to the crime of attempted burglary of a dwelling, a post-conviction relief motion was properly dismissed without an evidentiary hearing under Miss. Code Ann. § 99-39-11(2) because there was no ineffective assistance of counsel where jurisdiction was included in an indictment, the charges were not contradictory, an attempt charge was appropriate, and appellant inmate's other self-serving arguments were wholly unsupported by the record. Moreover, a sentence was not illegal since a suspended sentence was not required in addition to post-release supervision, the sentence imposed was within the range permitted, and the inmate was not misinformed regarding his appellate rights. McKinney v. State, 7 So. 3d 291 (Miss. Ct. App. 2008).

Post-conviction relief was denied in a case where appellant inmate's post-release supervision (PRS) and suspended sentences were revoked because the inmate was on state PRS the moment that he was released from federal custody. Therefore, there was no error in revoking his PRS based on an arrest for drugs shortly after his release from federal custody. Lenoir v. State, 4 So. 3d 1056 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 122 (Miss. 2009).

Defendant was not considered a habitual offender for sentencing purposes, and his sentence could not be considered "mandatory" under Miss. Code Ann. § 47-7-47(2)(c); therefore, defendant was eligible for earned probation, and suspension of a convicted felon's sentence was proper and under the sound discretion of the trial court due to the passage of Miss. Code Ann. § 47-7-34; circuit and county courts had the power to suspend sentences for prior convicted felons that would have been considered illegal under § 47-7-33(1). Campbell v. State, 993 So. 2d 413 (Miss. Ct. App. 2008).

Defendant's sentence was valid and non-modifiable where he was ordered to serve 15 years in the custody of the Mississippi Department of Corrections (MDOC), with seven years to be served by actual incarceration, and the remaining eight years to be suspended and served by way of post-release supervision under Miss. Code Ann. § 47-7-34, with five of the eight years to be served in accordance with "probation-like" terms under the supervision of the MDOC, under Miss. Code Ann. § 47-7-34 and Miss. Code Ann. § 47-7-35. The appellate court ignored the clear intention of the circuit court to order a 15-year sentence, and this intention was appropriately accomplished under Miss. Code Ann. § 47-7-34. Johnson v. State, 925 So. 2d 86 (Miss. 2006).

Because defendant did not receive a suspended sentence, his sentence was not illegal under Miss. Code Ann. § 47-7-33(1) (Rev. 2004), and therefore his petition for post-conviction relief was properly dismissed as untimely, as it was not filed until March 2005; under Miss. Code Ann. § 99-39-5(2), defendant only had until June 5, 2003, to file his motion for post-conviction relief, and two years incarceration plus one year of supervision did not exceed 15 years, the maximum sentence for uttering a forgery. King v. State, 929 So. 2d 373 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

ALR. Availability of discovery at probation revocation hearings. 52 A.L.R.5th 559.

§ 47-7-35. Terms and conditions of probation; court to determine; sex offender registry check required prior to placing offender on probation.

(1) The courts referred to in Section 47-7-33 or 47-7-34 shall determine the terms and conditions of probation or post-release supervision and may alter or modify, at any time during the period of probation or post-release supervision, the conditions and may include among them the following or any other:

That the offender shall:

(a) Commit no offense against the laws of this or any other state of the United States, or of any federal, territorial or tribal jurisdiction of the United States;

(b) Avoid injurious or vicious habits;

(c) Avoid persons or places of disreputable or harmful character;

(d) Report to the probation and parole officer as directed;

(e) Permit the probation and parole officer to visit him at home or elsewhere;

(f) Work faithfully at suitable employment so far as possible;

(g) Remain within a specified area;

(h) Pay his fine in one (1) or several sums;

(i) Support his dependents;

(j) Submit, as provided in Section 47-5-601, to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States;

(k) Register as a sex offender if so required under Title 45, Chapter 33.

(2) When any court places a defendant on misdemeanor probation, the court must cause to be conducted a search of the probationer's name or other identifying information against the registration information regarding sex offenders maintained under Title 45, Chapter 33. The search may be conducted using the Internet site maintained by the Department of Public Safety Sex Offender Registry.

SOURCES: Codes, 1942, § 4004-24; Laws, 1956, ch. 262, § 11; brought forward, Laws, 1981, ch. 465, § 107; Laws, 1983, ch. 435, § 6; reenacted, Laws, 1984, ch. 471, § 117; reenacted, Laws, 1986, ch. 413, § 117; Laws, 1995, ch. 596, § 10; Laws, 2006, ch. 566, § 5; Laws, 2007, ch. 392, § 14; Laws, 2011, ch. 359, § 13, eff from and after July 1, 2011.

Cross References — Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

JUDICIAL DECISIONS

1. In general.
2. Banishment.
3. Probation properly revoked.
4. Propriety of particular sentences.

1. In general.

When the court exercises its authority to suspend the execution of a portion of a defendant's sentence, the normal course of procedure is to (1) impose a sentence, (2) determine what portion is to be suspended, (3) impose a period of probation, and (4) specify the terms and conditions upon which the probation/suspended sentence is contingent; if at any time during the period of probation it is determined that the probationer violated any of the specified conditions of his or her probation, the court has the authority to revoke any part or all of the probation or any part or all of the suspended sentence, as if the decision to suspend the sentence and place the defendant on probation had never been made. Artis v. State, 643 So. 2d 533 (Miss. 1994).

A court must base its revocation of a suspended sentence on a violation of the clear terms and conditions of the suspended sentence; due process requires that the trial judge at least orally inform the defendant of the terms and conditions upon which his or her suspended sentence is contingent before it may be properly revoked for the violation of those terms and conditions. Artis v. State, 643 So. 2d 533 (Miss. 1994).

Policy of denying public benefits to probationers as condition of probation unless and until probationer requests hearing for modification of probation and receives approval from court to apply for public assistance does not violate due process clause of Fourteenth Amendment, does not violate equal protection right of probationer or her dependent children nor are such conditions of probation unduly intrusive or constitutionally impermissible restrictions. Clark v. Prichard, 812 F.2d 991 (5th Cir. 1987).

Sentence was neither excessive nor beyond the court's authority which required the defendant, who was convicted of a violation of § 97-3-19, to serve 30 days in the county jail, perform 60 days of community work, pay costs of special election, and pay costs of trial, as conditions for the suspension of a one year sentence and 2 years of probation. Fanning v. State, 497 So. 2d 70 (Miss. 1986).

2. Banishment.

In a challenge to the banishment provision of defendant's sentence pursuant to Miss. Code Ann. § 99-39-5(1)(a), the substitution of some period of formal probationary supervision in place of a like term of banishment did not constitute an increase in the degree or character of defendant's punishment that would invoke constitutional concerns of double jeopardy, U.S. Const. Amend. V, and the requirement of supervised probation was essentially rehabilitative in its objectives and not punitive; thus, the change in probation terms was within the circuit court's authority as contained in Miss. Code Ann. § 47-7-35. Weaver v. State, 856 So. 2d 407 (Miss. Ct. App. 2003), writ of certiorari denied by 859 So. 2d 1017, 2003 Miss. LEXIS 515 (Miss. 2003).

A banishment provision must bear a reasonable relationship to the purpose of probation, the ends of justice and the best interests of the defendant and the public must be served, the public policy must not be violated, the rehabilitative purpose of the probation must not be defeated, and the defendant's rights under the First, Fifth and Fourteenth Amendments to the United States Constitution must not be violated. Hamm v. State, 758 So. 2d 1042 (Miss. Ct. App. 2000).

3. Probation properly revoked.

Denial of the inmate's petition for post-conviction relief was proper where his probation was rightfully revoked because there was sufficient evidence supporting the conclusion that he more likely than not failed to avoid persons of harmful character and disreputable places. Hubbard v. State, 919 So. 2d 1022 (Miss. Ct. App. 2005).

4. Propriety of particular sentences.

Defendant's sentence was valid and non-modifiable where he was ordered to serve 15 years in the custody of the Mississippi Department of Corrections (MDOC), with seven years to be served by actual incarceration, and the remaining eight years to be suspended and served by way of post-release supervision under Miss. Code Ann. § 47-7-34, with five of the eight years to be served in accordance with "probation-like" terms under the supervision of the MDOC, under Miss. Code Ann. § 47-7-34 and Miss. Code Ann. § 47-7-35. The appellate court ignored the clear intention of the circuit court to order a 15-year sentence, and this intention was appropriately accomplished under Miss. Code Ann. § 47-7-34. Johnson v. State, 925 So. 2d 86 (Miss. 2006).

RESEARCH REFERENCES

ALR. Propriety of conditioning probation or suspended sentence on defendant's refraining from political activity, protest, or the like. 45 A.L.R.3d 1022.

Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution. 73 A.L.R.3d 1240.

Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim. 79 A.L.R.3d 976.

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs. 79 A.L.R.3d 1025.

Propriety of conditioning probation upon defendant's posting of bond guaranteeing compliance with terms of probation. 79 A.L.R.3d 1068.

Validity of requirement that, as condition of probation, defendant submit to warrantless searches. 79 A.L.R.3d 1083.

Propriety of conditioning probation on defendant's remaining childless or having no additional children during probationary period. 94 A.L.R.3d 1218.

Right of defendant sentenced after revocation of probation to credit for jail time served as condition of probation. 99 A.L.R.3d 781.

Propriety of conditioning probation on defendant's not associating with particular person. 99 A.L.R.3d 967.

Propriety of conditioning probation on defendant's serving part of probationary period in jail or prison. 6 A.L.R.4th 446.

Propriety of conditioning probation on defendant's not entering specified geographical area. 28 A.L.R.4th 725.

Propriety of conditioning probation on defendant's submission to polygraph or other lie detector testing. 86 A.L.R.4th 709.

Propriety of conditioning probation on defendant's submission to drug testing. 87 A.L.R.4th 929.

Propriety of Requirement, as Condition of Probation, That Defendant Refrain from Use of Intoxicants. 46 A.L.R.6th 241.

Validity, under Fourth Amendment, of warrantless search of parolee or his property by parole officer. 32 A.L.R. Fed. 155.

Propriety, as condition of probation granted pursuant to 18 USCA sec. 3651, of requiring that probationer refrain from consumption of alcoholic beverages. 37 A.L.R. Fed. 843.

§ 47-7-37. Period of probation; arrest, revocation and recommitment for violation of probation or postrelease supervision; hearing; revocation of probation for technical violation; imprisonment in technical violation center; certain restrictions on imposition of bail for persons required to register as sex offender.

(1) The period of probation shall be fixed by the court, and may at any time be extended or terminated by the court, or judge in vacation. Such period with any extension thereof shall not exceed five (5) years, except that in cases of desertion and/or failure to support minor children, the period of probation

may be fixed and/or extended by the court for so long as the duty to support such minor children exists. The time served on probation or post-release supervision may be reduced pursuant to Section 47-7-40.

(2) At any time during the period of probation, the court, or judge in vacation, may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the probationer to be arrested. Any probation and parole officer may arrest a probationer without a warrant, or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the probation and parole officer, violated the conditions of probation. Such written statement delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the probationer.

(3) Whenever an offender is arrested on a warrant for an alleged violation of probation as herein provided, the department shall hold an informal preliminary hearing within seventy-two (72) hours of the arrest to determine whether there is reasonable cause to believe the person has violated a condition of probation. A preliminary hearing shall not be required when the offender is not under arrest on a warrant or the offender signed a waiver of a preliminary hearing. The preliminary hearing may be conducted electronically. If reasonable cause is found, the offender may be confined no more than twenty-one (21) days from the admission to detention until a revocation hearing is held. If the revocation hearing is not held within twenty-one (21) days, the probationer shall be released from custody and returned to probation status.

(4) If a probationer or offender is subject to registration as a sex offender, the court must make a finding that the probationer or offender is not a danger to the public prior to release with or without bail. In determining the danger posed by the release of the offender or probationer, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender or probationer's past and present conduct, including convictions of crimes and any record of arrests without conviction for crimes involving violence or sex crimes; any other evidence of allegations of unlawful sexual conduct or the use of violence by the offender or probationer; the offender or probationer's family ties, length of residence in the community, employment history and mental condition; the offender or probationer's history and conduct during the probation or other supervised release and any other previous supervisions, including disciplinary records of previous incarcerations; the likelihood that the offender or probationer will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; and any other facts the court considers relevant.

(5)(a) The probation and parole officer after making an arrest shall present to the detaining authorities a similar statement of the circumstances of violation. The probation and parole officer shall at once notify the court of the arrest and detention of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation. Within twenty-one (21) days of arrest and detention by warrant as herein provided, the court shall cause the probationer to be brought before it and may continue or revoke all or any part of the probation or the suspension of sentence. If the court revokes probation for a technical violation, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(b) If the offender is not detained as a result of the warrant, the court shall cause the probationer to be brought before it within a reasonable time and may continue or revoke all or any part of the probation or the suspension of sentence, and may cause the sentence imposed to be executed or may impose any part of the sentence which might have been imposed at the time of conviction. If the court revokes probation for a technical violation, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(c) If the court does not hold a hearing or does not take action on the violation within the twenty-one-day period, the offender shall be released from detention and shall return to probation status. The court may subsequently hold a hearing and may revoke probation or may continue probation and modify the terms and conditions of probation. If the court revokes probation for a technical violation, the court shall impose a period of imprisonment to be served in either a technical violation center operated by the department or a restitution center not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred and eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(d) For an offender charged with a technical violation who has not been detained awaiting the revocation hearing, the court may hold a hearing within a reasonable time. The court may revoke probation or may continue probation and modify the terms and conditions of probation. If the court revokes probation for a technical violation the court shall impose a period of imprisonment to be served in either a technical violation center operated by the department or a restitution center not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(6) If the probationer is arrested in a circuit court district in the State of Mississippi other than that in which he was convicted, the probation and parole officer, upon the written request of the sentencing judge, shall furnish to the circuit court or the county court of the county in which the arrest is made, or to the judge of such court, a report concerning the probationer, and such court or the judge in vacation shall have authority, after a hearing, to continue or revoke all or any part of probation or all or any part of the suspension of sentence, and may in case of revocation proceed to deal with the case as if there had been no probation. In such case, the clerk of the court in which the order of revocation is issued shall forward a transcript of such order to the clerk of the court of original jurisdiction, and the clerk of that court shall proceed as if the order of revocation had been issued by the court of original jurisdiction. Upon the revocation of probation or suspension of sentence of any offender, such offender shall be placed in the legal custody of the State Department of Corrections and shall be subject to the requirements thereof.

(7) Any probationer who removes himself from the State of Mississippi without permission of the court placing him on probation, or the court to which jurisdiction has been transferred, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that one is on probation shall be considered as any part of the time that he shall be sentenced to serve.

(8) The arresting officer, except when a probation and parole officer, shall be allowed the same fees as now provided by law for arrest on warrant, and such fees shall be taxed against the probationer and paid as now provided by law.

(9) The arrest, revocation and recommitment procedures of this section also apply to persons who are serving a period of post-release supervision imposed by the court.

(10) Unless good cause for the delay is established in the record of the proceeding, the probation revocation charge shall be dismissed if the revocation hearing is not held within thirty (30) days of the warrant being issued.

(11) The Department of Corrections shall provide semiannually to the Oversight Task Force the number of warrants issued for an alleged violation of probation or post-release supervision, the average time between detention on a warrant and preliminary hearing, the average time between detention on a warrant and revocation hearing, the number of ninety-day sentences in a technical violation center issued by the court, the number of one-hundred-twenty-day sentences in a technical violation center issued by the court, the number of one-hundred-eighty-day sentences issued by the court, and the number and average length of the suspended sentences imposed by the court in response to a violation.

SOURCES: Codes, 1942, § 4004-25; Laws, 1956, ch. 262, § 12; Laws, 1962, ch. 331; brought forward, Laws, 1981, ch. 465, § 108; reenacted, Laws, 1984, ch. 471, § 118; reenacted, Laws, 1986, ch. 413, § 118; Laws, 1990, ch. 331, § 1; Laws, 1992, ch. 395, § 1; Laws, 1995, ch. 596, § 11; Laws, 2006, ch. 566, § 6; Laws, 2014, ch. 457, § 58, eff from and after July 1, 2014.

Editor's Note — This section was set out to correct an error in the 2014 Cumulative Supplement. The reference to "Section 55 of this act" at the end of subsection (1) was changed to "Section 47-7-40."

Amendment Notes — The 2014 amendment added present (3), (10), and (11) and redesignated former undesignated paragraphs as (1), (2), and (4) through (9); in present (1), added the last sentence; and rewrote present (5)(a).

Cross References — Oversight Task Force, see § 47-5-6.

Technical violation centers, see § 47-7-38.1.

JUDICIAL DECISIONS

1. In general; applicability.
2. Constitutional issues.
3. Jurisdiction.
4. Proceedings; right to counsel.
5. —Evidence.
6. Propriety of particular sentences.
7. Miscellaneous.

1. In general; applicability.

Pursuant to Miss. Code Ann. § 47-7-37, only the court had the authority to revoke probation; accordingly, the trial court properly exercised jurisdiction over defendant in revoking his post-release supervision. Edwards v. State, 946 So. 2d 822 (Miss. Ct. App. 2007).

Per Miss. Code Ann. § 47-7-37, the circuit court had the statutory authority to revoke defendant's post-release supervision when he sold cocaine to an agent while on release. There was no error where the circuit court reinstated his five year suspended sentence; further, per the bench warrant upon which defendant was arrested, and the summons setting the revocation hearing, hand delivered to defendant, he had notice of the revocation hearing and he was not denied due process or entitled to post-conviction relief. Rucker v. State, 909 So. 2d 137 (Miss. Ct. App. 2005).

Defendant's violation of the condition of his suspended sentence occurred within the five-year implied period of probation, Miss. Code Ann. § 47-7-37; defendant understood the simple and clear condition that he was not to violate any laws of any city or state or of the United States. McCaine v. State, 879 So. 2d 1114 (Miss. Ct. App. 2004).

Defendant was shown to have violated his probation, and pursuant to Miss. Code Ann. § 47-7-37 the trial judge had the right to reimpose the previously suspended seven year sentence; defendant's three years incarceration and seven years suspended plus five years of post-release supervision did not equate to fifteen years of time-served, and the sentence was not in violation of the statute. Brown v. State, 872 So. 2d 96 (Miss. Ct. App. 2004).

In a capital murder case, defendant's contention that his identification was the result of an illegal arrest was without merit as his probation officer had the legal authority to sign the warrant under Miss. Code Ann. § 47-7-37, even though he allegedly had no personal knowledge of the circumstances in the warrant. Howell v. State, 860 So. 2d 704 (Miss. 2003), writ of certiorari dismissed by 543 U.S. 440, 125 S. Ct. 856, 160 L. Ed. 2d 873, 2005 U.S. LEXIS 1371, 18 Fla. L. Weekly Fed. S 105 (2005).

Petitioner's sentence for five years probation was proper where the trial court could impose up to five years' post-release supervision following time in the custody of the Department of Corrections, and the petitioner failed to establish that he was being held unlawfully in custody. Payton v. State, 845 So. 2d 713 (Miss. Ct. App. 2003), writ of certiorari denied by 859 So. 2d 392, 2003 Miss. LEXIS 436 (Miss. 2003), writ of certiorari denied by 540 U.S. 1078, 124 S. Ct. 931, 157 L. Ed. 2d 751, 2003 U.S. LEXIS 9076, 72 U.S.L.W. 3392 (2003).

A defendant who wishes to challenge the revocation of his probation need not pursue the administrative remedies set out in Miss. Code Ann. § 47-5-803, as only a court can continue or revoke a defendant's probation. Rodriguez v. State, 839 So. 2d 561 (Miss. Ct. App. 2003).

The trial court could not properly revoke the defendant's suspended sentence where (1) a 10-year period of probation was improperly imposed on the defendant as the statute allowed a maximum period of probation of five years, (2) shortly before the end of the fifth year of probation, the defendant's probation officer filed a violation report and an arrest warrant was issued, but no arrest occurred at that time, and (3) about two years later, the defendant was arrested on an unrelated charge, and a petition to revoke his suspended sentence was then filed. Simpson v. State, 785 So. 2d 1121 (Miss. Ct. App. 2001).

Where defendant would maintain his status as a probationer for a total of five years after his release, the maximum permitted, he would only be subjected to supervised probation, with its requirements of periodic reporting and other more restrictive provisions, for the first two years of the five-year probationary period. Hall v. State, 800 So. 2d 1202 (Miss. Ct. App. 2001).

Where the period of probation has already expired, it cannot thereafter be revoked, regardless of whether the probationary status terminated prior to the expiration of the term originally set by the sentencing court or by the passage of time. Davis v. State, 844 So. 2d 1142 (Miss. 2000).

When the county circuit court revoked the defendant's probation, it lacked the jurisdiction since, at the time of the defendant's arrest, the five year term of her probation had already expired by several months and, therefore, could not be revoked; a form warrant signed and mailed by an officer of the Department of Corrections did not serve to toll the running of term of probation because it was not issued by the court or a judge in vacation. Ellis v. State, 748 So. 2d 130 (Miss. 1999).

The combined terms of a sentence of imprisonment and a period of probation may exceed the maximum sentence permitted for a crime. Carter v. State, 726 So. 2d 195 (Miss. Ct. App. 1998).

When the court exercises its authority to suspend the execution of a portion of a defendant's sentence, the normal course of procedure is to (1) impose a sentence, (2) determine what portion is to be suspended, (3) impose a period of probation, and (4) specify the terms and conditions upon which the probation/suspended sentence is contingent; if at any time during the period of probation it is determined that the probationer violated any of the specified conditions of his or her probation, the court has the authority to revoke any part or all of the probation or any part or all of the suspended sentence, as if the decision to suspend the sentence and place the defendant on probation had never been made. Artis v. State, 643 So. 2d 533 (Miss. 1994).

Once a circuit or county court exercises its option to impose a definite sentence it cannot subsequently set that sentence aside and impose a greater sentence. Leonard v. State, 271 So. 2d 445 (Miss. 1973).

This provision does not apply to misdemeanors. Jackson v. Waller, 248 Miss. 166, 156 So. 2d 594 (1963), error overruled, 248 Miss. 172, 160 So. 2d 184 (1964).

2. Constitutional issues.

In a post-conviction appeal, a state inmate argued unsuccessfully that he was denied due process by the circuit court's failure to require that he be found guilty of a crime before revoking his probation. The Mississippi Supreme Court had stated that a conviction was not necessary to revoke probation; probation could be revoked upon a showing that the inmate more likely than not violated the terms of probation. Loisel v. State, 995 So. 2d 850 (Miss. Ct. App. 2008).

In a post-conviction appeal, a state inmate argued unsuccessfully the circuit court erred in refusing his motion for post-conviction relief and that as a result, he was denied due process. Contrary to the inmate's assertion, the record showed that the circuit court judge provided a written order in which he found that the inmate admitted at the revocation hearing to violating his probation, and it was that admission that served as the basis for the revocation. Loisel v. State, 995 So. 2d 850 (Miss. Ct. App. 2008).

In a post-conviction appeal in which a state inmate argued that during his probation revocation hearing, he was on medication for depression and anxiety, and, as a result, he claimed that he felt extremely uncomfortable at the hearing and was denied due process, that argument failed. Nothing in the record indicated that the subject of his medications or mental state was ever brought up during the initial revocation hearing in relation to that proceeding, and he was represented by counsel and given an opportunity to be heard, to present evidence, and to examine witnesses. Loisel v. State, 995 So. 2d 850 (Miss. Ct. App. 2008).

Order dismissing defendant's motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-11(2) was upheld where defendant was accorded the minimum due process requirements to which defendant was entitled at a probation revocation hearing; defendant was given the opportunity to cross-examine the State's witnesses and to call witnesses. Morgan v. State, 995 So. 2d 787 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 374, 2008 Miss. LEXIS 633 (Miss. 2008).

Petitioner was accorded the minimum due process requirements to which he was entitled at his revocation hearing; he signed the waiver of preliminary hearing, which contained the charges against him, and his revocation hearing was not held until two months later; there the evidence against him was presented and he was given the opportunity to be heard on the matter. Payton v. State, 845 So. 2d 713 (Miss. Ct. App. 2003), writ of certiorari denied by 859 So. 2d 392, 2003 Miss. LEXIS 436 (Miss. 2003), writ of certiorari denied by 540 U.S. 1078, 124 S. Ct. 931, 157 L. Ed. 2d 751, 2003 U.S. LEXIS 9076, 72 U.S.L.W. 3392 (2003).

A defendant who allegedly violated the terms of his probation by committing the crime of sale of cocaine was denied due process of law by having his probation revoked immediately after a mistrial was declared in his trial on the charge of sale of cocaine where the revocation was based upon the trial which had just resulted in a mistrial, the defendant never agreed that the court could summarily revoke his probation in the event the trial resulted in anything other than a conviction, and he was not given advance notice of a revocation hearing. Grayson v. State, 648 So. 2d 1129 (Miss. 1994).

A defendant was deprived of due process by a trial court's failure to conduct an inquiry as to the reason she was delinquent in paying her probation fines before revoking her probation because of her failure to pay those fines. Berdin v. State, 648 So. 2d 73 (Miss. 1994). But see Smith v. State, 742 So. 2d 1146 (Miss. 1999).

A defendant's probation revocation violated her due process rights where there was no record of the defendant receiving notice of a probation violation, and the disparity between the court's statements when probation was revoked, the written and signed order of revocation, and the court's after-the-fact explanation at the defendant's post-conviction relief hearing demonstrated a lack of actual notice. Berdin v. State, 648 So. 2d 73 (Miss. 1994). But see Smith v. State, 742 So. 2d 1146 (Miss. 1999).

A probationer was not denied due process due to the lack of a preliminary hearing in his probation revocation proceedings, even though a hearing expressly designated as "preliminary" was not held, where 3 hearings were held in the circuit courts and the first and second hearings were, for all practical purposes, equivalent to a preliminary hearing. Additionally, the probationer was not wrongfully denied the opportunity to call his own witnesses where he made a last-minute request during the third hearing to call witnesses who allegedly would have testified in his behalf, the court concluded that the witnesses would have offered no new evidence, the probationer had already admitted that he committed probation violations, and at most the witnesses would have testified in regard to the probationer's character and would have had no effect on the outcome of the case. Riely v. State, 562 So. 2d 1206 (Miss. 1990).

The probation-revocation procedure delineated in § 47-7-37 is constitutional; the statute includes the minimum due process requirements applicable to parole and probation revocation procedures set forth in Morrissey v. Brewer (1972) 408 U.S. 471, 33 L. Ed. 2d 484, 92 S. Ct. 2593 and Gagnon v. Scarpelli (1973) 411 U.S. 778, 36 L. Ed. 2d 656, 93 S. Ct. 1756, 71 Ohio Ops 2d 279. Riely v. State, 562 So. 2d 1206 (Miss. 1990).

3. Jurisdiction.

Circuit court conditioned future suspension of fifteen years of the inmate's sentence on her successful completion of the Intensive Supervision Program (ISP); the circuit court's sentence was not prohibited by Miss. Code Ann. § 47-5-1003(4) where suspension of fifteen years of the inmate's sentence was contingent upon her completion of the ISP, and successful completion of post-release supervision was conditioned upon obedience to the terms and conditions of post-release supervision spelled out in her court order, none of which required completion of the ISP; the inmate was not subject to removal from the ISP by the circuit court, but only by the Mississippi Department of Corrections. Ivory v. State, 999 So. 2d 420 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 852, 2009 Miss. LEXIS 51 (Miss. 2009).

Regardless of whether defendant was under earned- or post-release supervision at the time he initially violated probation, he admitted to violating his probation and when he appeared at his probation revocation hearing, he had not been released from the trial court's jurisdiction; accordingly, the trial court properly exercised jurisdiction over him under Miss. Code Ann. § 47-7-37 in revoking his probation, so the reduced sentence that he received was unquestionably legal. Grace v. State, 919 So. 2d 987 (Miss. Ct. App. 2005).

Trial court had jurisdiction to revoke defendant's probation after he pled guilty to two counts of sale of cocaine, because Miss. Code Ann. § 47-7-37 did not require that the original sentencing judge be the person who revoked probation. Evans v. State, 846 So. 2d 301 (Miss. Ct. App. 2003).

Where the judge who revoked the inmate's suspended sentence was not the judge who imposed the sentence, the trial court had authority to revoke the sentence pursuant to Miss. Code Ann. § 47-7-37, as the identity of the judge who revoked the suspension was irrelevant. Atwell v. State, 848 So. 2d 190 (Miss. Ct. App. 2003).

The trial judge's expressed retention of jurisdiction during the first 180 days of the defendant's two year probation did not act as a waiver of jurisdiction beyond the first 180 days yet prior to the expiration of the term of probation. Reaves v. State, 749 So. 2d 295 (Miss. Ct. App. 1999).

4. Proceedings; right to counsel.

Trial court was entitled to revoke a probationer's post-release supervision (PRS) based solely on the probationers admission to the violations of the terms and conditions of the probationer's PRS. Furthermore, because the case was not complex, the probationer would not have been entitled to appointed counsel even if the probationer had been informed that the probationer could request counsel Hall v. State, — So. 3d —, 2014 Miss. App. LEXIS 41 (Miss. Ct. App. Jan. 28, 2014).

Post-conviction relief was denied in a case where a portion of a suspended sentence was revoked under Miss. Code Ann. § 47-7-37 because there was no due process violation since the evidence relied upon was listed, there was no double jeopardy violation since the original sentence was reinstated, and counsel was not required since the case was not complex. Pruitt v. State, 953 So. 2d 302 (Miss. Ct. App. 2007).

Post-conviction relief was properly denied, because petitioner's probation was properly revoked based on his indictment for burglary, as petitioner was provided with written notice of the charges against him, the evidence against him was presented to the court in the form of an indictment for burglary and failure to pay supervision and court costs fees, and petitioner was given the opportunity to be heard in court and to present evidence that could refute the allegations levied against him. Newsom v. State, 904 So. 2d 1095 (Miss. Ct. App. 2004).

Postconviction relief was properly denied, because petitioner was not improperly denied a right to counsel at his probation revocation hearing, as the record did not reflect that petitioner obtained or requested counsel during the revocation hearing, and the trial court was under no duty to appoint counsel for petitioner during the revocation proceeding. Newsom v. State, 904 So. 2d 1095 (Miss. Ct. App. 2004).

Probationers and parolees do not "have, per se, a right to counsel at revocation hearings." Whether probationers have a right to counsel must be answered "on a case-by-case basis in the exercise of a sound discretion by the state authority charged with responsibility for administering the probation and parole system." Riely v. State, 562 So. 2d 1206 (Miss. 1990).

A probationer was not deprived of the right to counsel at his probation revocation hearings in violation of his constitutional rights where the circuit court did not actually "disallow" the probationer to have legal representation but merely refused to continue the hearing in response to his belated request for more time to obtain counsel, the case was not "complex or otherwise difficult to develop," and counsel was provided upon the probationer's request prior to the fourth hearing before the circuit court and prior to his appeal to the Supreme Court. Riely v. State, 562 So. 2d 1206 (Miss. 1990).

A probationer was not denied due process due to the lack of a preliminary hearing in his probation revocation proceedings, even though a hearing expressly designated as "preliminary" was not held, where 3 hearings were held in the circuit courts and the first and second hearings were, for all practical purposes, equivalent to a preliminary hearing. Additionally, the probationer was not wrongfully denied the opportunity to call his own witnesses where he made a last-minute request during the third hearing to call witnesses who allegedly would have testified in his behalf, the court concluded that the witnesses would have offered no new evidence, the probationer had already admitted that he committed probation violations, and at most the witnesses would have testified in regard to the probationer's character and would have had no effect on the outcome of the case. Riely v. State, 562 So. 2d 1206 (Miss. 1990).

5. —Evidence.

Denial of the inmate's motion for post-conviction relief was proper where, had the information of his HIV diagnosis been available to the judge, it would not have changed the fact that the inmate violated the terms of his probation; however, the court remanded for proper sentencing, stating that his failure to successfully complete the Regimented Inmate Discipline (RID) Program did not occur because of any misconduct or similar failure on his part. Curry v. State, 855 So. 2d 452 (Miss. Ct. App. 2003).

Evidence that defendant failed to make restitution payments and engaged in continuing misconduct while on probation for aggravated assault supported trial court's decision to revoke probation and impose the remaining 11 years of defendant's 12-year sentence; defendant was not denied due process and the sentence was not excessive. Rodriguez v. State, 839 So. 2d 561 (Miss. Ct. App. 2003).

Since a hearing on a petition to revoke probation is not a criminal proceeding, the evidence for revocation need not be beyond a reasonable doubt, but it is only necessary that the evidence be sufficient to convince the court that probation should be revoked. Ray v. State, 229 So. 2d 579 (Miss. 1969).

6. Propriety of particular sentences.

Based on the circuit court's failure to retain sentencing jurisdiction pursuant to Miss. Code Ann. § 47-7-47, its implied attempt to impermissibly delegate its authority to suspend part of the prisoner's 16-year sentence, and the fact that he did not have a revocation hearing, the circuit court's sentence was impermissibly indeterminate. Graham v. State, 85 So. 3d 860 (Miss. Ct. App. 2011), vacated by, remanded by 85 So. 3d 847, 2012 Miss. LEXIS 190 (Miss. 2012).

Defendant, who admitted that he had twice violated a specific term of his post-release supervision, was properly required to serve the remainder of his entire sentence because Miss. Code Ann. § 47-7-37 gave the circuit court judge discretion to revoke and impose any portion or all of a suspended sentence, and a conviction was not necessary in order to revoke probation. Yance v. State, 30 So. 3d 370 (Miss. Ct. App. 2010).

There was no error in the circuit court's dismissal of an inmate's motion for post-conviction relief. After the inmate violated his post-release supervision, the circuit court revoked his post-release supervision for a period of eight years with the first three years to be served on house arrest and the remaining sentence to be served on post-release supervision; the inmate's sentence was within the circuit court's authority according to Miss. Code Ann. § 47-7-37. Williams v. State, 4 So. 3d 388 (Miss. Ct. App. 2009).

Where appellant served four years of his six-year sentence for the sale of cocaine, he was released; upon the revocation of his suspended two-year sentence, the trial court violated Miss. Code Ann. § 47-7-37 and appellant's protection against double jeopardy by imposing a three-year term of imprisonment. Branch v. State, 996 So. 2d 829 (Miss. Ct. App. 2008).

In an appeal from a circuit court's summary dismissal of his motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-11(2), a pro se inmate argued unsuccessfully that his sentence illegally exceeded the statutory maximum under Miss. Code. Ann. § 97-3-73, and therefore, it was illegal for the circuit court to institute and then revoke his post-release supervision. Since the inmate's sentence did not exceed the maximum allowable sentence as provided for in Miss. Code Ann. § 97-3-75, there was no merit to his argument that because his sentence exceeded the time allowed by the statute, his post-release supervision was not illegally instituted and revoked, there was no merit to his argument that he should have received credit for the time he spent on post-release supervision, and, under Miss. Code Ann. § 47-7-37, the circuit court had the right to reimpose the previously suspended 12-year sentence. Fluker v. State, 2 So. 3d 717 (Miss. Ct. App. 2008).

Post-conviction relief was denied in a case where appellant inmate's post-release supervision and suspended sentences were revoked because the inmate was merely ordered to serve the remainder of his sentence under Miss. Code Ann. § 47-7-37; therefore, he was not entitled to a milder sentence for forgery, pursuant to Miss. Code Ann. § 99-19-33. Lenoir v. State, 4 So. 3d 1056 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 122 (Miss. 2009).

Motion for post-conviction relief was denied in a case where defendant's suspended sentence for statutory rape was revoked because he waived issues relating to a speedy trial and defects in an evidence sample due to a guilty plea, there was no evidence that an indictment was manufactured, and the revocation of the suspended sentence was permitted under Miss. Code Ann. §§ 47-7-34 and 47-7-37 where defendant had already served a portion of a five-year sentence after the guilty plea was entered. Davis v. State, 954 So. 2d 530 (Miss. Ct. App. 2007).

Where defendant had already served 18 months of his ten-year sentence, the trial court's order sentencing defendant to serve ten years upon his second violation of the terms of his postrelease supervision did exceed the authority of the court, which was only authorized to reinstate the remainder of defendant's original sentence. The maximum term remaining on defendant's sentence that could have been reinstated by the court was eight years and six months. Harvey v. State, 919 So. 2d 282 (Miss. Ct. App. 2005).

Where a trial court sentenced defendant to a term of one year in the Mississippi Department of Corrections (MDOC), followed by supervised probation under the supervision of the MDOC for a period of 10 years, a court of appeals erred in reversing the sentence because it was clear that the trial court was placing defendant on probation, only five years of which would be served under the supervision of the MDOC, the remaining five years being in essence "unsupervised probation." Thus, the sentence did not violate Miss. Code Ann. §§ 47-7-33, 47-7-34, or 47-7-37. Miller v. State, 875 So. 2d 194 (Miss. 2004).

While Miss. Code Ann. § 47-7-37 (Rev. 2000) gave the trial court the authority to impose less than the full sentence as a sanction for an inmate's probation violation, since the trial court stated it was sentencing the inmate to "his 2½ years," the appellate court inferred that the trial court had intended to impose the entire suspended sentence of 4½ years, which was the sentence stated in the written order and which prevailed over the oral sentence. Boutwell v. State, 847 So. 2d 294 (Miss. Ct. App. 2003).

After an arson conviction, a trial court erred by sentencing defendant to 10 years of post-release supervision because only five years was permitted under Miss. Code Ann. § 47-7-37. Miller v. State, 856 So. 2d 420 (Miss. Ct. App. 2003), affirmed in part and reversed in part by 2004 Miss. LEXIS 694 (Miss. June 17, 2004).

Twenty-year sentence for aggravated assault, of which eight years were suspended for a period of five years did not exceed the 20-year statutory maximum for the offense because a period of probation is not included in calculating the period of incarceration to which a defendant is sentenced. Ray v. State, 844 So. 2d 483 (Miss. Ct. App. 2002), writ of certiorari denied by 846 So. 2d 229, 2003 Miss. App. LEXIS 485 (Miss. Ct. App. 2003).

After petitioner admitted he breached the terms of his suspended sentence, the trial court was entitled to revoke any or all of the suspended sentence and was also allowed to impose the four years it originally suspended, and thus, the petitioner was not entitled to a credit of 15 months served on supervised release deducted from the four-year suspended sentence that petitioner was ordered to serve after he breached his suspended sentence. Johnson v. State, 802 So. 2d 110 (Miss. Ct. App. 2001).

The probationary period imposed on the defendant was improper and in violation of the statute, which allowed a maximum period of probation of five years, where his sentence was suspended and he was placed on 10 years' probation. Simpson v. State, 785 So. 2d 1121 (Miss. Ct. App. 2001).

Upon a defendant's violation of his probation, it was well within the court's power to revoke his probation or his suspended sentence and reinstate any or all of the original sentence if it deemed such an action necessary; court could sentence a defendant to the full original sentence if it deemed such an action necessary. Brunson v. State, 796 So. 2d 284 (Miss. Ct. App. 2001).

Defendant's sentence of nineteen and one-half years incarceration and six months suspended plus five years of probation does not equate to twenty-five years of time-served, and the sentence is not in violation of this section or § 97-3-25. Carter v. State, 754 So. 2d 1207 (Miss. 2000).

Where the defendant was sentenced to serve a term of 10 years, suspended for two years in the custody of the Mississippi Department of Corrections, with such suspension made contingent upon his successful completion of a two year period of house arrest, and where the defendant failed to abide by the terms and conditions of his probation and house arrest, the trial court was authorized to revoke the defendant's probation and impose any part or all of the 10 year sentence originally imposed. Reaves v. State, 749 So. 2d 295 (Miss. Ct. App. 1999).

The defendant was entitled to reversal and remand for resentencing where he was given the statutory maximum sentence of 20 years, but with six months suspended and probation for five years; such sentence exceeded the statutory maximum sentence. Carter v. State, — So. 2d —, 1999 Miss. App. LEXIS 235 (Miss. Ct. App. Apr. 20, 1999), reversed by 754 So. 2d 1207, 2000 Miss. LEXIS 7 (Miss. 2000).

The revocation of a defendant's suspended sentence 10 years after the date of the original sentence was not improper, where the defendant was sentenced to 30 years' imprisonment, the execution of 15 years of the 30-year sentence was suspended, the defendant was also ordered to serve a 5-year period of supervised probation, the defendant was released on parole after serving 5 years in the state penitentiary on the 15-year "to serve" portion of his sentence, the defendant was arrested for receiving stolen property approximately 2 years after his release on parole and was reincarcerated, he was released on probation 19 months later, and his 15-year suspended sentence was partially revoked for a period of 6 years for violation of the suspended sentence as a result of a house burglary which occurred approximately one year after he was released on probation. The 5-year probationary period for the 15-year suspended portion of the defendant's 30-year sentence did not begin to run until the day he was released on probation, and the house burglary which triggered the revocation of the suspended sentence took place well within the 5-year period of probation. Moore v. State, 585 So. 2d 738 (Miss. 1991).

Where on remand for resentencing, the trial court sentenced defendant, this being his first offense, to 3 ½ years in the state penitentiary, but included in the resentencing order a proviso that when defendant shall have served one year of the sentence, he should be placed on probation and parole as to the remaining 2 ½-year-period for a term of 5 years, inasmuch as the period of probation did not exceed the limit set in Code 1942 § 4004-25, the judgment would be affirmed. Pettus v. Alexander, 278 So. 2d 778 (Miss. 1973).

7. Miscellaneous.

Decision to revoke appellant's, an inmate's, probation was appropriate pursuant to Miss. Code Ann. § 47-7-37 because he had testified that he had used marijuana one time since being placed on probation, and, in revoking his probation, the trial judge found that the inmate had used drugs while on probation, had failed to pay supervision fees and court costs, and had resided with his brother, who had an outstanding felony warrant. Whitaker v. State, 22 So. 3d 326 (Miss. Ct. App. 2009).

State acted on a probation revocation petition within a reasonable amount of time; defendant had fled the jurisdiction to Pennsylvania upon release from prison, and remained there until returning to Mississippi, shortly before being served with the revocation petition and arrested. Leech v. State, 994 So. 2d 850 (Miss. Ct. App. 2008), writ of certiorari dismissed by 999 So. 2d 852, 2009 Miss. LEXIS 50 (Miss. 2009).

Revocation of defendant's probation and reinstatement of an initially suspended sentence was well within a trial judge's discretion and within the confines of statutory authority where defendant committed another armed robbery while on probation for armed robbery, thereby violating the terms of probation. Deere v. State, 976 So. 2d 977 (Miss. Ct. App. 2008).

Denial of the inmate's petition for post-conviction relief was proper pursuant to Miss. Code Ann. § 99-39-21(1) where his argument that the judge should not have presided over the revocation hearing was not preserved for review because he did not raise the issue at the revocation proceeding. In addition, it was without merit because the judge was exercising his authority under Miss. Code Ann. § 47-7-37 to issue a warrant for the inmate's arrest for a probation violation; thus, he was acting within his statutory authority and there was no indication that he was unqualified or biased. Hubbard v. State, 919 So. 2d 1022 (Miss. Ct. App. 2005).

Where petitioner had waived his right to a probation revocation hearing, the court had the right to re-impose petitioner's suspended sentence for uttering forgery because he had tested positive for marijuana and was terminated from a work program. While petitioner claimed that he did not understand that he would have to serve the remaining balance of his sentence, he was not entitled to postconviction relief. Gates v. State, 919 So. 2d 170 (Miss. Ct. App. 2005).

Under Miss. Code Ann. § 47-7-37, probation did not equal time served and could not be credited toward a suspended sentence; therefore, the trial court did not err in denying defendant's motion for credit for the time he had served on probation. Simmons v. State, 913 So. 2d 1011 (Miss. Ct. App. 2005).

Record indicated an order signed by the trial judge extending defendant's probation for one year; since there was a record of an order extending probation for the trial judge to consider in reviewing defendant's motion for postconviction relief, the trial judge acted within proper judicial discretion in denying defendant's requested relief. McDonald v. State, 904 So. 2d 1167 (Miss. Ct. App. 2004).

A two-day delay between probationer's arrest and presentation of petition to the court was insufficient to run afoul of the statute's requirement that judicial oversight be brought to this notice and that the probationer be given an opportunity to be heard. Thorn v. State, 815 So. 2d 455 (Miss. Ct. App. 2002).

When the trial court imposes conditions upon a suspended sentence without stating a probationary period, Mississippi law implies imposition of the maximum probationary period of five years and, therefore, if the defendant violates the conditions of his probation within such period, the court has the authority to revoke the suspended sentence. Shumpert v. State, 764 So. 2d 1250 (Miss. Ct. App. 2000).

Before a trial court may revoke a defendant's probation or suspended sentence, it must afford the defendant the minimum due process requirements, including a preliminary hearing and the opportunity to cross-examine witnesses. Shumpert v. State, 764 So. 2d 1250 (Miss. Ct. App. 2000).

Although a probationary period was not described by the court, a probationary period of up to five years was in fact established based on the terms of the defendant's release where he was ordered to serve ten years in the Mississippi Department of Corrections with the last eight years suspended, pending future good behavior. Wilson v. State, 735 So. 2d 290 (Miss. 1999).

The trial court did not violate the defendant's right to due process when it revoked his suspended sentence based upon an offense that occurred prior to the imposition of his probation and when the court's express condition of probation stated that the defendant "shall hereafter commit no offense against the laws of this . . . state," where (1) the defendant was served with a copy of the state's petition to revoke his suspended sentence at least five days before the hearing in open court and was given notice thereof, (2) during the hearing, the defendant, through his attorney, confessed to the petition filed by the state and acknowledged that he violated the terms of his probation, and (3) the trial court judge advised the defendant that he was entitled to a hearing during which the state would be required to sufficiently establish that he violated the terms of his probation, but he informed the court that he did not desire such a hearing. Smith v. State, — So. 2d —, 1998 Miss. App. LEXIS 1053 (Miss. Ct. App. Dec. 18, 1998), reversed en banc by, remanded by 742 So. 2d 1146, 1999 Miss. LEXIS 260 (Miss. 1999).

When failure to pay court-imposed fines becomes a possible basis for a probation revocation, the trial court must follow the procedural mandates of § 99-19-20(2). Berdin v. State, 648 So. 2d 73 (Miss. 1994). But see Smith v. State, 742 So. 2d 1146 (Miss. 1999).

A court must base its revocation of a suspended sentence on a violation of the clear terms and conditions of the suspended sentence; due process requires that the trial judge at least orally inform the defendant of the terms and conditions upon which his or her suspended sentence is contingent before it may be properly revoked for the violation of those terms and conditions. Artis v. State, 643 So. 2d 533 (Miss. 1994).

A prisoner will not be permitted to serve his or her period of probation simultaneously with his or her incarceration; "probation" denotes a release of the defendant, under suspension of sentence, into the community under the supervision of a probation officer. Moore v. State, 585 So. 2d 738 (Miss. 1991).

Petition for revocation of probation filed approximately 11 days prior to expiration of probationary period tolls running of probationary period and court acts within reasonable time by revoking probation 2 days after probationary period would otherwise have expired. Jackson v. State, 483 So. 2d 1353 (Miss. 1986), cert. denied, 522 U.S. 1119, 118 S. Ct. 1059, 140 L. Ed. 2d 120 (1998).

ATTORNEY GENERAL OPINIONS

Based on specified facts pertaining to an encounter with and rearrest of a probationer, the probationer himself was ultimately responsible for his own medical expenses arising from the encounter; however, assuming he was indigent, the county would be responsible for the medical expenses incurred as the injury occurred and the expenses were incurred prior to the initiation of proceedings for revocation of his probation. Griffith, May 3, 2002, A.G. Op. #02-0232.

When a probationer is arrested pursuant to Section 47-7-37 and held in the county jail awaiting a probation revocation hearing, the prisoner is a state inmate and the Mississippi Department of Corrections is responsible for the cost of incarcerating such an inmate. Shepard, Mar. 21, 2003, A.G. Op. #03-0108.

When a probationer is arrested for an unrelated crime, the prisoner is in the custody of the local government and the local government must bear the costs of incarceration; however, upon the issuance of a warrant pursuant to this section or § 47-7-27 the prisoner becomes a state inmate and the Mississippi Department of Corrections must bear the cost of incarceration. Pope, Mar. 28, 2003, A.G. Op. #03-0137.

Based on Section 47-5-901(3), when a probationer is arrested pursuant to this section and held in the county jail awaiting a probation revocation hearing, the Mississippi Department of Corrections is not responsible for the cost of incarcerating such an inmate; therefore, the county must absorb such costs. Note: Shepard (Mar. 21, 2003), A.G. Op. #03-0108, is hereby revoked. Shepard, July 7, 2003, A.G. Op. 03-0108.

Upon issuance of a warrant pursuant to Section 47-7-37 the prisoner becomes a state inmate and the Mississippi Department of Corrections must bear the cost of incarceration. Howard, July 22, 2005, A.G. Op. 05-0345.

RESEARCH REFERENCES

ALR. Right to assistance of counsel at proceedings to revoke probation. 44 A.L.R.3d 306.

Propriety, in imposing sentence for original offense after revocation of probation, of considering acts because of which probation was revoked. 65 A.L.R.3d 1100.

Acquittal in criminal proceeding as precluding revocation of probation on same charge. 76 A.L.R.3d 564.

Propriety of revocation of probation for subsequent criminal conviction which is subject to appeal. 76 A.L.R.3d 588.

Admissibility, in state probation revocation proceedings, of evidence obtained through illegal search and seizure. 77 A.L.R.3d 636.

Admissibility, in state probation revocation proceedings, of incriminating statement obtained in violation of Miranda

Rule. 77 A.L.R.3d 669.

Right of defendant sentenced after revocation of probation to credit for jail time served as condition of probation. 99 A.L.R.3d 781.

Admissibility of hearsay evidence in probation revocation hearings. 11 A.L.R.4th 999.

Power of court, after expiration of probation term, to revoke or modify probation for violations committed during the probation term. 13 A.L.R.4th 1240.

Power of court to revoke probation for acts committed after imposition of sentence but prior to commencement of probation term. 22 A.L.R.4th 755.

Propriety of increased sentence following revocation of probation. 23 A.L.R.4th 883.

Probation revocation: insanity as defense. 56 A.L.R.4th 1178.

Availability of discovery at probation revocation hearings. 52 A.L.R.5th 559.

Right and sufficiency of allocation in probation revocation proceeding. 70 A.L.R.5th 533.

Am Jur. 19 Am. Jur. Proof of Facts 2d 583, Governmental Entity's Liability for Injuries Caused by Negligently Released Individual.

§ 47-7-37.1. Revocation of probation or post-release supervision.

Notwithstanding any other provision of law to the contrary, if a court finds by a preponderance of the evidence, that a probationer or a person under post-release supervision has committed a felony or absconded, the court may revoke his probation and impose any or all of the sentence. For purposes of this section, "absconding from supervision" means the failure of a probationer to report to his supervising officer for six (6) or more consecutive months.

SOURCES: Laws, 2015, ch. 448, § 3, eff from and after passage (approved Apr. 20, 2015.)

Editor's Note — Section 4, Chapter 448, Laws of 2015, provides:

"SECTION 4. Sections 1 and 2 of this act shall take effect and be in force from and after July 1, 2015. Section 3 of this act shall take effect and be in force from and after its passage [approved April 20, 2015]."

§ 47-7-38. Graduated sanctions as alternative to judicial modification or revocation of parole, probation or post-release supervision.

(1) The department shall have the authority to impose graduated sanctions as an alternative to judicial modification or revocation, as provided in Sections 47-7-27 and 47-7-37, for offenders on probation, parole, or post-release supervision who commit technical violations of the conditions of supervision as defined by Section 47-7-2.

(2) The commissioner shall develop a standardized graduated sanctions system, which shall include a grid to guide field officers in determining the suitable response to a technical violation. The commissioner shall promulgate rules and regulations for the development and application of the system of sanctions. Field officers shall be required to conform to the sanction grid developed.

(3) The system of sanctions shall include a list of sanctions for the most common types of violations. When determining the sanction to impose, the field officer shall take into account the offender's assessed risk level, previous violations and sanctions, and severity of the current and prior violations.

(4) Field officers shall notify the sentencing court when a probationer has committed a technical violation or the parole board when a parolee has committed a technical violation of the type of violation and the sanction imposed. When the technical violation is an arrest for a new criminal offense, the field officer shall notify the court within forty-eight (48) hours of becoming aware of the arrest.

(5) The graduated sanctions that the department may impose include, but shall not be limited to:

(a) Verbal warnings;

(b) Increased reporting;

(c) Increased drug and alcohol testing;

(d) Mandatory substance abuse treatment;

(e) Loss of earned-discharge credits; and

(f) Incarceration in a county jail for no more than two (2) days. Incarceration as a sanction shall not be used more than two (2) times per month for a total period incarcerated of no more than four (4) days.

(6) The system shall also define positive reinforcements that offenders will receive for compliance with conditions of supervision. These positive reinforcements shall include, but not limited to:

(a) Verbal recognition;

(b) Reduced reporting; and

(c) Credits for earned discharge which shall be awarded pursuant to Section 47-7-40.

(7) The Department of Corrections shall provide semiannually to the Oversight Task Force the number and percentage of offenders who have one or more violations during the year, the average number of violations per offender during the year and the total and average number of incarceration sanctions as defined in subsection (5) of this section imposed during the year.

SOURCES: Laws, 2014, ch. 457, § 54, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference is Section 54 of H.B. 585 (Chapter 457) codified as this section. The reference to "Section 70 of this act" in (6)(c) was changed to "Section 55 of this act," which has been codified as new Section 47-7-40. The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 47-7-38.1. Technical violation centers.

(1) The Department of Corrections shall establish technical violation centers to detain probation and parole violators revoked by the court or parole board.

(2) The department shall place an offender in a violation center for a technical violation as ordered by the board pursuant to Section 47-7-27 and the sentencing court pursuant to Section 47-7-37.

(3) The violation centers shall be equipped to address the underlying factors that led to the offender's violation as identified based on the results of a risk and needs assessment. At a minimum each violation center shall include substance abuse services shown to reduce recidivism and a reduction in the use of illicit substances or alcohol, education programs, employment preparation and training programs and behavioral programs.

(4) As required by Section 47-5-20(b), the department shall notify, by certified mail, each member of the board of supervisors of the county in which the violation center shall be located of the department's intent to convert an existing department facility to a technical violation center.

(5) The department shall establish rules and regulations for the implementation and operation of the technical violation centers.

(6) The Department of Corrections shall provide to the Oversight Task Force semiannually the average daily population of the technical violation centers, the number of admissions to the technical violation centers, and the average time served in the technical violation centers.

SOURCES: Laws, 2014, ch. 457, § 61, eff from and after July 1, 2014.

Editor's Note — Oversight Task Force, see § 47-5-6.

§ 47-7-39. Change of residence; transfer.

If, for good and sufficient reasons, a probationer desires to change his residence within or without the state, such transfer may be effected by application to his field supervisor which transfer shall be subject to the court's consent and subject to such regulations as the court, or judge, may require.

SOURCES: Codes, 1942, § 4004-26; Laws, 1956, ch. 262, § 13; Laws, 1976, ch. 440, § 89; reenacted, Laws, 1981, ch. 465, § 109; reenacted, Laws, 1984, ch. 471, § 119; reenacted, Laws, 1986, ch. 413, § 119, eff from and after passage (approved March 28, 1986).

§ 47-7-40. Earned-discharge program; eligibility; accrual of earned-discharge credits.

(1) The commissioner shall establish rules and regulations for implementing the earned-discharge program that allows offenders on probation and parole to reduce the period of supervision for complying with conditions of probation. The department shall have the authority to award earned-discharge credits to all offenders placed on probation, parole, or post-release supervision who are in compliance with the terms and conditions of supervision. An offender serving a Mississippi sentence for an eligible offense in any jurisdiction under the Interstate Compact for Adult Offender Supervision shall be eligible for earned-discharge credits under this section.

(2) For each full calendar month of compliance with the conditions of supervision, earned-discharge credits equal to the number of days in that month shall be deducted from the offender's sentence discharge date. Credits begin to accrue for eligible offenders after the first full calendar month of compliance supervision conditions. For the purposes of this section, an offender is deemed to be in compliance with the conditions of supervision if there was no violation of the conditions of supervision.

(3) No earned-discharge credits may accrue for a calendar month in which a violation report has been submitted, the offender has absconded from supervision, the offender is serving a term of imprisonment in a technical violation center, or for the months between the submission of the violation report and the final action on the violation report by the court or the board.

(4) Earned-discharge credits shall be applied to the sentence within thirty (30) days of the end of the month in which the credits were earned. At least every six (6) months, an offender who is serving a sentence eligible for earned-discharge credits shall be notified of the current sentence discharge date.

(5) Once the combination of time served on probation, parole or post-release supervision, and earned-discharge credits satisfy the term of probation, parole, or post-release supervision, the board or sentencing court shall order final discharge of the offender. No less than sixty (60) days prior to the date of final discharge, the department shall notify the sentencing court and the board of the impending discharge.

(6) The department shall provide semiannually to the Oversight Task Force the number and percentage of offenders who qualify for earned discharge in one or more months of the year and the average amount of credits earned within the year.

SOURCES: Laws, 2014, ch. 457, § 55, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in the first sentence of subsection (2) by substituting "offender's sentence" for "offenders sentence" and deleting "established in this act" from the end of the sentence. The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 47-7-41. Discharge from probation.

When a probationer shall be discharged from probation by the court of original jurisdiction, the field supervisor, upon receiving a written request from the probationer, shall forward a written report of the record of the probationer to the Division of Community Corrections of the department, which shall present a copy of this report to the Governor. The Governor may, in his discretion, at any time thereafter by appropriate executive order restore any civil rights lost by the probationer by virtue of his conviction or plea of guilty in the court of original jurisdiction.

SOURCES: Codes, 1942, § 4004-27; Laws, 1956, ch. 262, § 14; Laws, 1976, ch. 440, § 90; reenacted, Laws, 1981, ch. 465, § 110; reenacted, Laws, 1984, ch. 471, § 120; reenacted, Laws, 1986, ch. 413, § 120; Laws, 1992, ch. 511, § 1; Laws, 2002, ch. 624, § 7, eff from and after July 1, 2002.

RESEARCH REFERENCES

ALR. Right in absence of express statutory authorization, of one convicted of crime and imprisoned or paroled, to prosecute civil action. 74 A.L.R.3d 680.

Who may institute proceedings to revoke probation. 21 A.L.R.5th 275.

Validity, construction, and application of state criminal disenfranchisement provisions. 10 A.L.R.6th 31.

§ 47-7-43. Application of provisions.

The provisions of this chapter are hereby extended to all persons who, at the effective date thereof, may be on parole, or eligible to be placed on parole under existing laws, with the same force and effect as if this chapter had been in operation at the time such persons were placed on parole or become eligible to be placed thereon, as the case may be.

SOURCES: Codes, 1942, § 4004-17; Laws, 1950, ch. 524, § 18; brought forward, Laws, 1981, ch. 465, § 111; reenacted, Laws, 1984, ch. 471, § 121; reenacted, Laws, 1986, ch. 413, § 121, eff from and after passage (approved March 28, 1986).

§ 47-7-45. Provisions inapplicable to Oakley Youth Development Center.

The provisions of this chapter shall not apply to probation under the Youth Court Law nor to parole from the Oakley Youth Development Center.

SOURCES: Codes, 1942, § 4004-18; Laws, 1950, ch. 524, § 19; Laws, 1956, ch. 262, § 8; brought forward, Laws, 1981, ch. 465, § 112; reenacted, Laws, 1984, ch. 471, § 122; reenacted, Laws, 1986, ch. 413, § 122; Laws, 2010, ch. 554, § 10, eff from and after July 1, 2011.

§ 47-7-47. Earned probation program; restitution to crime victim.

(1) The judge of any circuit court may place an offender on a program of earned probation after a period of confinement as set out herein and the judge may seek the advice of the commissioner and shall direct that the defendant be under the supervision of the department.

(2)(a) Any circuit court or county court may, upon its own motion, acting upon the advice and consent of the commissioner not earlier than thirty (30) days nor later than one (1) year after the defendant has been delivered to the custody of the department, to which he has been sentenced, suspend the further execution of the sentence and place the defendant on earned probation, except when a death sentence or life imprisonment is the maximum penalty which may be imposed or if the defendant has been confined two (2) or more times for the conviction of a felony on a previous occasion in any court or courts of the United States and of any state or territories thereof or has been convicted of a felony involving the use of a deadly weapon.

(b) The authority granted in this subsection shall be exercised by the judge who imposed sentence on the defendant, or his successor.

(c) The time limit imposed by paragraph (a) of this subsection is not applicable to those defendants sentenced to the custody of the department prior to April 14, 1977. Persons who are convicted of crimes that carry mandatory sentences shall not be eligible for earned probation.

(3) When any circuit or county court places an offender on earned probation, the court shall give notice to the Mississippi Department of Corrections within fifteen (15) days of the court's decision to place the offender on earned probation. Notice shall be delivered to the central office of the Mississippi Department of Corrections and to the regional office of the department which will be providing supervision to the offender on earned probation.

(4) If the court places any person on probation or earned probation, the court may order the person, as a condition of probation, to a period of confinement and treatment at a private or public agency or institution, either within or without the state, which treats emotional, mental or drug-related problems. Any person who, as a condition of probation, is confined for treatment at an out-of-state facility shall be supervised pursuant to Section 47-7-71, and any person confined at a private agency shall not be confined at public expense. Time served in any such agency or institution may be counted as time required to meet the criteria of subsection (2)(a).

(5) If the court places any person on probation or earned probation, the court may order the person to make appropriate restitution to any victim of his crime or to society through the performance of reasonable work for the benefit of the community.

(6) If the court places any person on probation or earned probation, the court may order the person, as a condition of probation, to submit, as provided in Section 47-5-601, to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States.

SOURCES: Laws, 1977, ch. 479, § 5; Laws, 1978, ch. 400, § 10; brought forward, Laws, 1981, ch. 465, § 113; Laws, 1981, ch. 502, § 12; Laws, 1983, ch. 435, § 7; reenacted, Laws, 1984, ch. 471, § 123; reenacted, Laws, 1986, ch. 413, § 123; Laws, 1996, ch. 397, § 1; Laws, 2000, ch. 622, § 3; Laws, 2001, ch. 482, § 9, eff from and after July 1, 2001.

Cross References — Applicability of this section to placement of offenders in intensive supervision program, see § 47-5-1003.

Requirement that person in earned probation program make payments to community service revolving fund, see § 47-7-49.

Restitution to victim, generally, see § 99-37-1 et seq.
Conditioning probation on restitution, see § 99-37-5.

JUDICIAL DECISIONS

1. In general.
2. Applicability.
3. Jurisdiction.

1. In general.

Trial court clearly erred by finding that it did not have jurisdiction to re-sentence defendant under Miss. Code Ann. § 47-7-47, the earned probation program, where he was neither an "inmate" nor "in custody" of the DOC after being released pending re-sentencing. Creel v. State, 944 So. 2d 896 (Miss. Ct. App. 2005), vacated by, remanded by 944 So. 2d 891, 2006 Miss. LEXIS 683 (Miss. 2006).

The trial court did not abuse its discretion or violate any statutory or constitutional rights of the defendant by removing him from the earned probation program without an evidentiary hearing. Bourrage v. State, 785 So. 2d 1096 (Miss. Ct. App. 2001).

The defendant was not improperly dismissed from the regimented inmate disciplinary program, notwithstanding her assertion that she was entitled to an evidentiary hearing prior to such dismissal. Green v. State, 784 So. 2d 273 (Miss. Ct. App. 2001).

This section does not inhibit the ability of the trial court to "adjust" a sentence within the limits of this section while an appeal is pending. Jenkins v. State, 733 So. 2d 833 (Miss. 1999).

The trial court judge acted in excess of his authority and jurisdiction when he released an inmate after the inmate was denied parole and was beyond the statutory deadline for modifying or amending a sentence. In re Moore, 722 So. 2d 465 (Miss. 1998), cert. denied, 525 U.S. 1123, 119 S. Ct. 905, 142 L. Ed. 2d 904 (1999).

Judge lacked authority to suspend remainder of defendant's sentence where defendant was clearly ineligible for release under statute governing earned probation, defendant was taken into custody for parole violation involving weapons and alcohol, and judge acted solely on his own after numerous ex parte communications with others. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Judge's use of nunc pro tunc order to suspend defendant's sentence following ex parte communications with defendant's daughter, regarding defendant's age and health, exceeded judge's authority where judge did not reserve right to judicial review at time of original sentencing. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Judge's use of nunc pro tunc order to correct sentencing order to show that judge had reserved judicial review of sentence for 180 days, thus permitting subsequent suspension of defendant's sentence, exceeded judge's authority, in that reservation language was not included in original order, defendant was not eligible for earned probation under statute, judge could not suspend sentence imposed by another judge, which defendant was serving at time judge suspended sentence, and judge acted ex parte, without motion by defendant's attorney. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

State Supreme Court's Wigginton decision, providing that trial judge who initially committed prisoner to regimented inmate discipline (RID) program could review prisoner's expulsion from that program in order to ascertain whether there was any basis for removal, did not authorize circuit court judge to use nunc pro tunc orders to suspend sentences and place prisoners on probation after time of original sentencing. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Circuit judge who sentenced prisoner under statute governing earned probation programs had authority to later make a determination whether to suspend execution of sentence due to removal of prisoner from Regimented Inmate Discipline (RID), or shock probation, program. Wigginton v. State, 668 So. 2d 763 (Miss. 1996).

Neither the due process clause nor Mississippi law gives rise to a protected liberty interest in the form of an expectation of release on probation. There is no liberty interest in release pursuant to the provisions of § 47-7-47, which creates a procedure whereby the courts may place a prisoner on probation, since the language of the statute is permissive rather than mandatory in nature; the statute vests absolute discretion in both the Department of Corrections and the court in determining whether probation should be recommended and granted, and this discretion affords a prisoner no constitutionally recognized liberty interest. Smith v. State, 580 So. 2d 1221 (Miss. 1991).

2. Applicability.

Where defendant pled guilty to statutory rape, the trial court did not err by sentencing defendant to participate in the Mississippi Regimented Inmate Discipline Program program under its own discretion, and not under the earned-time allowance program administered by the Mississippi DOC. Gatlin v. State, 18 So. 3d 290 (Miss. Ct. App. 2009).

Defendant was not considered a habitual offender for sentencing purposes, and his sentence could not be considered "mandatory" under Miss. Code Ann. § 47-7-47(2)(c); therefore, defendant was eligible for earned probation, and suspension of a convicted felon's sentence was proper and under the sound discretion of the trial court due to the passage of Miss. Code Ann. § 47-7-34; circuit and county courts had the power to suspend sentences for prior convicted felons that would have been considered illegal under § 47-7-33(1). Campbell v. State, 993 So. 2d 413 (Miss. Ct. App. 2008).

To the extent defendant may be correct that Miss. Code Ann. § 47-7-47 gave the trial judge between thirty days and one year to modify or suspend sentences, the authority to do so was within the sound discretion of the court, and the judge determined not to do so, which was not error. Ducote v. State, 970 So. 2d 1309 (Miss. Ct. App. 2007).

Circuit court's interpretation of Miss. Code Ann. § 47-7-47(2)(a) as pertaining to resentencing was erroneous because the statute did not pertain to resentencing, it pertained only to a suspension of the further execution of a sentence and to the placement of the convicted felon on earned probation. Creel v. State, 944 So. 2d 891 (Miss. 2006).

The statute does not apply to the intensive supervision program provided for in §§ 47-5-1001 through 47-5-1015 and, therefore, the circuit court did not have the authority to disregard a disciplinary committee's finding that the defendant was not guilty of a violation of the program and to reinstate his sentences. Babbitt v. State, 755 So. 2d 406 (Miss. 2000).

3. Jurisdiction.

Based on the circuit court's failure to retain sentencing jurisdiction pursuant to Miss. Code Ann. § 47-7-47, its implied attempt to impermissibly delegate its authority to suspend part of the prisoner's 16-year sentence, and the fact that he did not have a revocation hearing, the circuit court's sentence was impermissibly indeterminate. Graham v. State, 85 So. 3d 860 (Miss. Ct. App. 2011), vacated by, remanded by 85 So. 3d 847, 2012 Miss. LEXIS 190 (Miss. 2012).

Dismissal of the inmate's petition for postconviction relief was proper because the appeal was untimely; further, even assuming that his appeal was an appeal from the circuit court's dismissal of the inmate's motion for reconsideration, the circuit court did not commit clear error not did it abuse its discretion in dismissing that motion because the inmate had been sentenced during a previous term of court that had since ended, and thus the circuit court had lost jurisdiction as to any aspect of the inmate's sentencing under Miss. Code Ann. § 47-7-47(2). Doss v. State, 956 So. 2d 1100 (Miss. Ct. App. 2007).

While the statute provides for jurisdiction in matters of probation and earned probation, it does not provide for jurisdiction with regard to house arrest. Smith v. State, 766 So. 2d 50 (Miss. Ct. App. 2000).

ATTORNEY GENERAL OPINIONS

Once a court revokes a defendant's non-adjudicated status, accepts the defendant's original plea and imposes a sentence, the defendant has then been adjudicated guilty and the court may not return the defendant to a non-adjudicated status, even if the imposed sentence consists of an earned probation program. Terry, June 7, 2002, A.G. Op. #02-0320.

Any alderman may vote to repeal or amend a valid and effective ordinance. Collins, Apr. 7, 2003, A.G. Op. 03-0153.

A defendant who has served a single confinement for more than one felony conviction would be eligible for the earned probation program. Thomas, Apr. 25, 2003, A.G. Op. 03-0148.

RESEARCH REFERENCES

ALR. Criminal liability in connection with application for, or receipt of, public relief or welfare payments. 92 A.L.R.2d 421.

Construction of Federal Probation Act (18 USCS § 3651) that, in placing defendant on probation upon terms and conditions, defendant may be required to make restitution. 97 A.L.R.2d 798.

Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution. 73 A.L.R.3d 1240.

Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim. 79 A.L.R.3d 976.

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs. 79 A.L.R.3d 1025.

Propriety of conditioning probation on defendant's submission to drug testing. 87 A.L.R.4th 929.

Power of successor judge taking office during term time to vacate, set aside, or annul judgment entered by his or her predecessor. 51 A.L.R.5th 747.

Requirement, as condition of probation, pursuant to 18 USCS § 3651, that defendant make restitution to aggrieved parties. 71 A.L.R. Fed. 789.

Am Jur. 22A Am. Jur. 2d, Criminal Law §§ 1242 et seq.

22 Am. Jur. Trials 1, Prisoners' Rights Litigation.

§ 47-7-49. Creation of community service revolving fund; payments by offender on probation, parole, earned-release supervision, post-release supervision, or earned probation; disposition of payments; time limit on payments [Repealed effective June 30, 2018].

(1) Any offender on probation, parole, earned-release supervision, post-release supervision, earned probation or any other offender under the field supervision of the Community Services Division of the department shall pay to the department the sum of Fifty-five Dollars ($55.00) per month by certified check or money order unless a hardship waiver is granted. An offender shall make the initial payment within thirty (30) days after being released from imprisonment unless a hardship waiver is granted. A hardship waiver may be granted by the sentencing court or the Department of Corrections. A hardship waiver may not be granted for a period of time exceeding ninety (90) days. The commissioner or his designee shall deposit Fifty Dollars ($50.00) of each payment received into a special fund in the State Treasury, which is hereby

created, to be known as the Community Service Revolving Fund. Expenditures from this fund shall be made for: (a) the establishment of restitution and satellite centers; and (b) the establishment, administration and operation of the department's Drug Identification Program and the intensive and field supervision program. The Fifty Dollars ($50.00) may be used for salaries and to purchase equipment, supplies and vehicles to be used by the Community Services Division in the performance of its duties. Expenditures for the purposes established in this section may be made from the fund upon requisition by the commissioner, or his designee.

Of the remaining amount, Three Dollars ($3.00) of each payment shall be deposited into the Crime Victims' Compensation Fund created in Section 99-41-29, and Two Dollars ($2.00) shall be deposited into the Training Revolving Fund created pursuant to Section 47-7-51. When a person is convicted of a felony in this state, in addition to any other sentence it may impose, the court may, in its discretion, order the offender to pay a state assessment not to exceed the greater of One Thousand Dollars ($1,000.00) or the maximum fine that may be imposed for the offense, into the Crime Victims' Compensation Fund created pursuant to Section 99-41-29.

Any federal funds made available to the department for training or for training facilities, equipment or services shall be deposited into the Correctional Training Revolving Fund created in Section 47-7-51. The funds deposited in this account shall be used to support an expansion of the department's training program to include the renovation of facilities for training purposes, purchase of equipment and contracting of training services with community colleges in the state.

No offender shall be required to make this payment for a period of time longer than ten (10) years.

(2) The offender may be imprisoned until the payments are made if the offender is financially able to make the payments and the court in the county where the offender resides so finds, subject to the limitations hereinafter set out. The offender shall not be imprisoned if the offender is financially unable to make the payments and so states to the court in writing, under oath, and the court so finds.

(3) This section shall stand repealed from and after June 30, 2018.

SOURCES: Laws, 1979, ch. 462, §§ 1-3; brought forward, Laws, 1981, ch. 465, § 114; Laws, 1981, ch. 543, § 1; Laws, 1982, ch. 431, § 5; Laws, 1983, ch. 435, § 8, ch. 545, § 4; reenacted and amended, Laws, 1984, ch. 471, § 124; reenacted, Laws, 1986, ch. 413, § 124; Laws, 1986, ch. 426; Laws, 1990, ch. 509, § 16; Laws, 1991, ch. 408, § 1; Laws, 1993, ch. 335, § 1; Laws, 1994, ch. 317, § 1; reenacted and amended, Laws, 1995, ch. 538, § 1; Laws, 1995, ch. 596, § 12; Laws, 1995, ch. 621, § 2; Laws, 1996, ch. 376, § 1; Laws, 1996, ch. 379, § 2; Laws, 1996, ch. 474, § 2; reenacted and amended, Laws, 1997, ch. 366, § 1; Laws, 1998, ch. 463, § 1; Laws, 1999, ch. 541, § 1; Laws, 2001, ch. 572, § 1; reenacted and amended, Laws, 2002, ch. 448, § 1; reenacted and amended, Laws, 2002, ch. 624, § 8; Laws, 2003, ch. 412, § 1; Laws, 2004, ch. 444, § 1; Laws, 2005, ch. 372, § 1; Laws, 2006, ch. 381, § 1; Laws, 2008, ch. 328, § 1; Laws, 2010, ch. 404, § 1; Laws, 2012, ch. 385, § 1; Laws, 2015, ch. 328, § 1, eff from and after June 30, 2015.

Joint Legislative Committee Note — Section 1 of ch. 448, Laws of 2002, eff from and after passage (approved March 20, 2002), amended this section. Section 8 of ch. 624, Laws of 2002, eff from and after July 1, 2002 (approved April 25, 2002), also amended this section. As set out above, this section reflects the language of Section 8 of ch. 624, Laws of 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2015 amendment extended the repealer provision from "June 30, 2015" to "June 30, 2018" at the end of (3).

Cross References — Public service work programs, see §§ 47-5-401 et seq.

Correctional industries work program, see §§ 47-5-501 et seq.

Use of community service revolving funds for costs in conjunction with the drug identification program, see § 47-5-605.

Probation and parole, generally, see §§ 47-7-1 et seq.

Earned probation program, see § 47-7-47.

Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Restitution to victims of crime, see §§ 99-37-1 et seq.

Revocation of probation, suspension of sentence, or other form of release as alternative to contempt proceeding, see §§ 99-37-5 and 99-37-15.

Restitution centers, see § 99-37-19.

JUDICIAL DECISIONS

1. In general.

In viewing Miss. Code Ann. §§ 97-3-25, 99-19-32(1), and § 47-7-49 in pari materia, the trial court was within its discretion to order defendant, convicted of manslaughter and sentenced to a term of imprisonment, to pay not only a $10,000 fine, but also a $ 10,000 assessment to the Mississippi Crime Victims' Compensation Fund. Felder v. State, 876 So. 2d 372 (Miss. 2004).

§ 47-7-51. Correctional Training Revolving Fund.

(1) There is hereby created in the State Treasury a special fund, which shall be known as the Correctional Training Revolving Fund. This fund shall be used to develop and implement the comprehensive correction training program authorized in Chapter 509, Laws of 1990. These funds may be used to construct and renovate training facilities, purchase training equipment for the hiring of instructors, and to pay operating expenses to accomplish and fulfill the purposes of the training program.

(2) The Commissioner of Corrections shall establish guidelines for the use and accountability of such funds.

SOURCES: Laws, 1990, ch. 509, § 17, eff from and after July 1, 1990.

Editor's Note — Laws of 1990, ch. 509, enacted Sections 99-41-1 through 99-41-29, amended Section 47-7-49, and enacted Section 47-7-51.

Cross References — Deposit of federal funds into Correctional Training Revolving Fund, see § 47-7-49.

Portion of payments by offender on probation, parole, or earned probation to be paid into Training Revolving Fund, see § 47-7-49.

§ 47-7-53. Department of Corrections to assume duties, powers and responsibilities of Parole Board.

If the Parole Board is abolished, the Department of Corrections shall assume and exercise all the duties, powers and responsibilities of the State Parole Board. The Commissioner of Corrections may assign to the appropriate officers and divisions any powers and duties deemed appropriate to carry out the duties and powers of the Parole Board. Wherever the terms "State Parole Board" or "Parole Board" appear in any state law, they shall mean the Department of Corrections.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 25, § 4; Laws, 1995, ch. 596, § 2; Laws, 2004, ch. 569, § 3, eff from and after passage (approved May 14, 2004.)

§ 47-7-55. Parole Commission; creation; purpose; membership; compensation.

(1) There is hereby created a joint committee of the Senate and House of Representatives to be known as the Parole Commission, hereinafter referred to as the "commission." The commission shall study and make recommendations to the Legislature related to the abolition of parole, the complete and thorough classification of inmates prior to sentencing and sentencing standards.

(2) The commission shall consist of the following members:

(a) Three (3) members of the House Judiciary "B" Committee and three (3) members of the House Penitentiary Committee appointed by the Speaker.

(b) Three (3) members of the Senate Corrections Committee and three (3) members of the Senate Judiciary Committee appointed by the Lieutenant Governor.

(3) The Chairman of the Senate Corrections Committee and the Chairman of the House Penitentiary Committee shall serve as co-chair of the commission.

(4) The commission shall submit its findings and recommendations to the Legislature no later than January 2, 1996.

(5) For attending meetings of the commission, members of the commission shall receive per diem as provided by Section 25-3-69, and reimbursement of expenses as provided by Section 5-1-47. The members of the commission shall obtain the approval of the Management Committee of the House of Representatives and the Contingent Expense Committee of the Senate for per diem and travel expense expenditures of the commission. The members of the commission shall not receive per diem or expenses while the Legislature is in session. All expenses incurred by and on behalf of the commission shall be paid from the contingency funds of the Senate and the House of Representatives.

(6) In conducting its activities pursuant to this section, the commission may elicit the support of and participation by federal, state and local agencies and interested associations, organizations and individuals. The commission may appoint an advisory committee whose members shall serve without

compensation. The advisory committee may consist of judges, prosecuting attorneys, defense attorneys, medical professionals, correctional personnel and any other individual or groups that the commission desires to place on the advisory committee.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 25, § 7; Laws, 1995, ch. 596, § 13, eff from and after June 30, 1995.

UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION

SEC.
47-7-71. Uniform act for out-of-state parolee supervision.
47-7-73. Notification to county and municipal officials; probation or parole of out-of-state parolee.

§ 47-7-71. Uniform act for out-of-state parolee supervision.

I. The governor of this state is hereby authorized and directed to execute a compact on behalf of the state of Mississippi with any of the United States legally joining therein in the form substantially as follows:

A Compact

Entered into by and among the contracting states, signatories hereto, with the consent of the congress of the United States of America, granted by an act entitled "An act granting the consent of Congress to any two (2) or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one (1) year prior to his coming to the sending state and has not resided within the sending state more than six (6) continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: Provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six (6) months' notice in writing of its intention to withdraw from the compact to the other state party hereto.

II. This section may be cited as the uniform act for out-of-state parolee supervision.

SOURCES: Codes, 1942, § 4004.5; Laws, 1948, ch. 436, §§ 1, 3; brought forward, Laws, 1981, ch. 465, § 115; reenacted, Laws, 1984, ch. 471, § 125; reenacted, Laws, 1986, ch. 413, § 125, eff from and after passage (approved March 28, 1986).

Editor's Note — Laws of 1981, ch. 465, § 118, which provided for the automatic repeal of provisions reenacting the Department of Corrections and the State Parole Board on June 30, 1984, was repealed by Laws of 1984, ch. 471, § 126. In turn, Laws, 1984, ch. 471, § 128, provided for the automatic repeal of these provisions from and after July 1, 1986. Subsequently, Laws of 1986, ch. 413, § 126, effective from and after passage (approved March 28, 1986), repealed Laws of 1984, ch. 471, § 128, thereby removing the repeal date.

Cross References — Application of this compact to supervision of probationer confined for treatment in an out-of-state facility, see § 47-7-47.

Procedure upon violation of parole, see §§ 99-19-27, 99-19-29.

Comparable Laws from other States — California: California Pen C §§ 11175 to 11179.

Colorado: C.R.S. §§ 24-60-301 to 24-60-309.
New Jersey: N.J. Stat. §§ 2A:168-14 to 2A:168-17.
Oregon: ORS § 144.610 et seq.
Rhode Island: R.I. Gen. Laws §§ 13-9-1 to 13-9-5.
South Dakota: S.D. Codified Laws §§ 24-16-1 et seq.
Utah: Utah Code Ann. § 77-27-24.
Virginia: Va. Code Ann. §§ 53.1-166 et seq.
Washington: Rev. Code Wash. (ARCW) § 9.95.270.
Wisconsin: Wis. Stat. § 304.13.

JUDICIAL DECISIONS

1. In general.
2. No private right of action.
3. Construction.

1. In general.

When a victim was raped by a parolee accepted from another state for supervision, summary judgment was correctly granted to the State in the victim's action against it for negligently accepting supervision of the parolee and negligently supervising him because acceptance of the parolee's supervision was mandatory under the Uniform Act for Out-of-State Parolee Supervision, Miss. Code Ann. § 47-7-71, as he had family and a job in Mississippi, and decisions made by the parolee's supervising parole officer in the course of the parolee's supervision were discretionary, so the State could not be held liable under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. Doe v. State ex rel. Miss. Dep't of Corr., 859 So. 2d 350 (Miss. 2003).

2. No private right of action.

When a victim was raped by a parolee accepted from another state for supervision, the Uniform Act for Out-of-State Parolee Supervision, Miss. Code Ann. § 47-7-71, did not imply a private right of action on the victim's behalf against the State for accepting supervision of the parolee. Doe v. State ex rel. Miss. Dep't of Corr., 859 So. 2d 350 (Miss. 2003).

Where the inmate, while on probation, left Mississippi and went to Tennessee, the suspension of the inmate's sentence was properly revoked despite the fact that the suspended sentence order permitted the inmate's supervision to be transferred to Tennessee; the transfer was not automatic, there was no evidence that the inmate complied with the procedures necessary to transfer, and as a result, a transfer did not occur pursuant to Miss. Code Ann. § 47-7-71(1). Atwell v. State, 848 So. 2d 190 (Miss. Ct. App. 2003).

Parolee fell under Miss. Code Ann. § 47-7-71(1) of the Uniform Act for Out-of-State Parolee Supervision because the parolee's parents lived in the state and the parolee indicated that parolee had a job in the state, and thus the State's acceptance of the parolee under the Act was proper and mandatory; because there was nothing in the Act or the state corrections department regulations that required a field officer to revoke one's parole, the officer's decision not to revoke the parole after the parolee failed to timely report was an exercise of discretion, and because (1) there was no evidence of a gross, reckless, or wanton failure in the State's supervision of the parolee, and (2) there was no sufficient causal connection or element of foreseeability between the alleged violated statutory duty and the injuries sustained by the victim when raped by a parolee, the State maintained the benefit of immunity under Miss. Code Ann. § 11-46-9(1) of the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to 11-46-23, and the State was properly granted summary judgment in the victim's action for damages. Connell v. State, 841 So. 2d 1127 (Miss. 2003), opinion withdrawn by 2003 Miss. LEXIS 625 (Miss. Nov. 6, 2003), substituted opinion at 859 So. 2d 350, 2003 Miss. LEXIS 603 (Miss. 2003).

Where a parolee was arrested in Mississippi by agreement between Mississippi and sending state, pending his being retaken by authorities of the sending state under the statute which provides that a parolee who is in receiving state by agreement between receiving and sending state may be retaken, this did not violate the parolee's constitutional right. Stone v. Robinson, 219 Miss. 456, 69 So. 2d 206 (1954).

A certificate of parole issued by authorities of Louisiana was sufficient for parolee's arrest, and communications from authorities of Louisiana were sufficient to justify the chairman of Mississippi Parole Board in issuing a warrant for parolee's arrest pending his being retaken by authorities from Louisiana. Stone v. Robinson, 219 Miss. 456, 69 So. 2d 206 (1954).

The Uniform Act for Out-of-State Parolee Supervision, Miss. Code Ann. § 47-7-71, known as the "Compact," does not create a private right of action. Connell v. State, 841 So. 2d 1127 (Miss. 2003), opinion withdrawn by 2003 Miss. LEXIS 625 (Miss. Nov. 6, 2003), substituted opinion at 859 So. 2d 350, 2003 Miss. LEXIS 603 (Miss. 2003).

3. Construction.

Use of the conjunction "or" in Miss. Code Ann. § 47-7-71(1)(a) of the Uniform Act for Out-of-State Parolee Supervision allows a parolee to be sent to the receiving state if such person is a resident or the person has family in the receiving state. Connell v. State, 841 So. 2d 1127 (Miss. 2003), opinion withdrawn by 2003 Miss. LEXIS 625 (Miss. Nov. 6, 2003), substituted opinion at 859 So. 2d 350, 2003 Miss. LEXIS 603 (Miss. 2003).

When deciding whether to accept supervision of a parolee or probationer from another state, under the Uniform Act for Out-of-State Parolee Supervision, Miss. Code Ann. § 47-7-71, it mattered not whether the probationer or parolee was actually a resident of the receiving state because the use of the conjunction "or" in § 47-7-71(1)(a) allowed a parolee to be sent to the receiving state if such person was a resident or had family in the receiving state. Doe v. State ex rel. Miss. Dep't of Corr., 859 So. 2d 350 (Miss. 2003).

RESEARCH REFERENCES

Am Jur. 59 Am. Jur. 2d, Pardon and Parole § 75.

CJS. 67A C.J.S., Pardon and Parole §§ 69, 71, 72 et seq.

§ 47-7-73. Notification to county and municipal officials; probation or parole of out-of-state parolee.

The Department of Corrections shall notify the sheriff of the county and the police chief of each municipality in the county when a person is placed on probation or released on parole to reside in the county under the Uniform Act for Out-of-state Parolee Supervision.

SOURCES: Laws, 1998, ch. 532, § 1, eff from and after passage (approved April 17, 1998).

Cross References — Uniform act for out-of-state parolee supervision, see § 47-7-71.

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

SEC.
47-7-81. Interstate Compact for Adult Offender Supervision.
47-7-83. Supervision of offenders from participating states.
47-7-85. Application fee for out-of-state transfer; funds received to defray compact expenses.

§ 47-7-81. Interstate Compact for Adult Offender Supervision.

The Governor, on behalf of this state, may execute a compact, in substantially the following form, and the Governor, on behalf of this state, may execute a compact, in substantially the following form, and the Legislature signifies in advance its approval and ratification of such compact:

THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

ARTICLE I

PURPOSE

The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized, pursuant to the bylaws and rules of this compact, to travel across state lines both to and from each compacting state in such a manner as to: track the location of offenders; transfer supervision authority in an orderly and efficient manner; and when necessary, return offenders to the originating jurisdictions.

The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 USCS Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact and the interstate commission created under this compact, through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and to protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states.

In addition, this compact will: create an interstate commission that will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies that will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may enter a receiving state and apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated under the compact.

It is the policy of the compacting states that the activities conducted by the interstate commission created in this compact are the formation of public policies and are therefore public business.

ARTICLE II
DEFINITIONS

As used in this compact, the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

(a) "Adult" means individuals legally classified as adults and juveniles treated as adults by court order, statute or operation of law.

(b) "Bylaws" mean those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct.

(c) "Compact administrator" means the individual in each compacting state appointed under this compact who is responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

(d) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(e) "Commissioner" means the voting representative of each compacting state appointed under Article III of this compact.

(f) "Interstate commission" means the Interstate Commission for Adult Offender Supervision established by this compact.

(g) "Member" means the commissioner of a compacting state or the commissioner's designee, who shall be a person officially connected with the commissioner.

(h) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(i) "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies.

(j) "Person" means any individual, corporation, business enterprise or other legal entity, either public or private.

(k) "Rules" mean acts of the interstate commission, duly promulgated pursuant to Article VII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

(*l*) "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

(m) "State council" means the resident members of the respective state council for interstate adult offender supervision created by each state under Article III of this compact.

ARTICLE III
THE COMPACT COMMISSION

(A) The compacting states create the "Interstate Commission for Adult Offender Supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth in this compact, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(B) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision or the Governor for each state. While each member state may determine the membership of its own state council, its membership must include at least one (1) representative from the legislative, judicial and executive branches of government, victims groups and compact administrators. The Mississippi state council will be appointed by the compact administrator. The compact administrator also may appoint additional representatives to the state council when he deems such appointments necessary. The commissioner of corrections or his designee shall serve as the compact administrator and as the state's commissioner on the interstate commission in such capacity pursuant to applicable law of the member state. Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the Governor.

The commissioner of corrections shall serve as compact administrator and chairperson of the state council for interstate adult offender supervision. If the commissioner of corrections appoints a designee, the designee must be a deputy commissioner of corrections or the division director in the office of community corrections that has operational authority over the interstate compact division.

The term of office for state council members shall be four (4) years. The state council shall meet at least twice a year. The state council may advise the compact administrator on participation in the interstate commission activities and administration of the compact. Members of the council are entitled to reimbursement for travel and expenses related to the interstate commission as provided by state law.

In addition to appointment of its commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

(C) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations; the noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the interstate commission shall be ex officio (nonvoting) members. The interstate commission may provide in its bylaws for such additional, ex officio (nonvoting) members as it deems necessary.

(D) Each compacting state represented at any meeting of the interstate commission is entitled to one (1) vote. A majority of the compacting states constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(E) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven (27) or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(F) The interstate commission shall establish an executive committee that shall include commission officers, members and others as determined by the bylaws. The executive committee has the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule-making or amendment to the compact, or both. The executive committee: oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission; and performs other duties as directed by the commission or set forth in the bylaws.

ARTICLE IV

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

(1) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission.

(2) To promulgate rules that have the force and effect of statutory law and are binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission.

(4) To enforce compliance with compact provisions, interstate commission rules and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(5) To establish and maintain offices.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept or contract for services of personnel, including, but not limited to, members and their staffs.

(8) To establish and appoint committees and hire staff that it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents or consultants and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of same.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article IX of this compact.

(14) To sue and be sued.

(15) To provide for dispute resolution among compacting states.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. These reports shall include any recommendations that may have been adopted by the interstate commission.

(18) To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in that activity.

(19) To establish uniform standards for the reporting, collecting and exchanging of data.

ARTICLE V
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. Bylaws

The interstate commission, by a majority of the members within twelve (12) months of the first interstate commission meeting, shall adopt such bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(a) Establishing the fiscal year of the interstate commission;

(b) Establishing an executive committee and such other committees as may be necessary;

(c) Providing reasonable standards and procedures: (i) for the establishment of committees; and (ii) governing any general or specific delegation of any authority or function of the interstate commission;

(d) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each commission meeting;

(e) Establishing the titles and responsibilities of the officers of the interstate commission;

(f) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall govern exclusively the personnel policies and programs of the interstate commission;

(g) Providing a mechanism for concluding the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment or reserving, or both, of all of its debts and obligations;

(h) Providing transition rules for the "start up" administration of the compact; and

(i) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

(1) The interstate commission shall elect from among its members, by a majority of the members, a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; however, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission, through its executive committee, shall appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but the executive director shall not be a member of the interstate commission.

Section C. Corporate Records of the Interstate Commission

The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

Section D. Qualified Immunity, Defense and Indemnification

(1) The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of

property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities; however, nothing in this paragraph may be construed to protect any such person from suit or liability, or both, for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or which the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities if the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or which such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities if the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VI
ACTIVITIES OF THE INTERSTATE COMMISSION

(1) The interstate commission shall meet and take such actions as are consistent with this compact.

(2) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, the act must be taken at a meeting of the interstate commission and must receive an affirmative vote of a majority of the members present.

(3) Each member of the interstate commission has the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and may not delegate a vote to another member state. However, the compact administrator shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(4) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(5) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent that they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(6) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act," 5 USCS Section 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines, by two-thirds (2/3) vote, that an open meeting would be likely to: (a) relate solely to the interstate commission's internal personnel practices and procedures; (b) disclose matters specifically exempted from disclosure by statute; (c) disclosure trade secrets or commercial or financial information which is privileged or confidential; (d) involve accusing any person of a crime or formally censuring any person; (e) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy; (f) disclose investigatory records compiled for law enforcement purposes; (g) disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity; (h) disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; (i) specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(7) For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall certify publicly that, in the legal officer's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that shall describe fully and clearly, all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor, including, a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(8) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules, which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VII

RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(1) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(2) Rule-making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule-making shall substantially conform to the principles of the federal Administrative Procedure Act, 5 USCS Section 551 et seq., and the Federal Advisory Committee Act, 5 USCS App. 2, Section 1 et seq., as may be amended (hereinafter "APA").

(3) All rules and amendments shall become binding as of the date specified in each rule or amendment.

(4) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then that rule shall have no further force and effect in any compacting state.

(5) When promulgating a rule, the interstate commission shall: (a) publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule; (b) allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available; (c) provide an opportunity for an informal hearing; and (d) promulgate a final rule and its effective date, if appropriate, based on the rule-making record.

(6) Not later than sixty (60) days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of the rule. If the court finds that the interstate commission's action is not supported by substantial evidence (as defined in the APA) in the rule-making record, the court shall hold the rule unlawful and set it aside.

(7) Subjects to be addressed within twelve (12) months after the first meeting must include, at a minimum: (a) notice to victims and opportunity to be heard; (b) offender registration and compliance; (c) violations and returns; (d) transfer procedures and forms; (e) eligibility for transfer; (f) collection of restitution and fees from offenders; (g) data collection and reporting; (h) the level of supervision to be provided by the receiving state; (i) transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the

compact and the date on which the last eligible state adopts the compact; and (j) mediation, arbitration and dispute resolution.

The existing rules governing the operation of the previous compact superceded by this compact shall be null and void twelve (12) months after the first meeting of the interstate commission created under this compact.

(8) Upon determination by the interstate commission that an emergency exists, the interstate commission may promulgate an emergency rule that shall become effective immediately upon adoption; however, the usual rule-making procedures provided under this compact shall be applied retroactively to that rule as soon as reasonably possible, and in no event, later than ninety (90) days after the effective date of the rule.

ARTICLE VIII

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

(1) The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which significantly may affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

(1) The compacting states shall report to the interstate commission on issues or activities of concern to them and shall cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

(2) The interstate commission shall attempt to resolve any disputes or other issues that are subject to the compact and which may arise among compacting states and noncompacting states.

(3) The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

Section C. Enforcement

The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Article XI, Section B, of this compact.

Section D. Retaking Cases From Another Jurisdiction

The duly accredited officers of a sending state may enter a receiving state and apprehend and retake any person on probation or parole according to the laws of the United States. For that purpose, the sending state must establish the authority of the officer and the identity of the person or persons to be retaken. The person or persons must be afforded a preliminary hearing consistent with due process requirements under the United States Constitution as interpreted by the Supreme Court of the United States. All legal requirements to extradition of fugitives from justice are waived expressly on the part of states that are parties to this compact as to such persons. The decision of the sending state to retake a person on probation or parole is conclusive and not reviewable within the receiving state; however, if, at the time a state seeks to retake a probationer or parolee, there is pending against him within the receiving state a criminal charge or if he is suspected of having committed within that state a criminal offense, the probationer or parolee may not be retaken without the consent of the receiving state until the probationer or parolee is discharged from prosecution or from imprisonment for such offense. The duly accredited officers of the sending state may transport prisoners being retaken through any state that is a party to this compact without interference.

ARTICLE IX
FINANCE

(1) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(2) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff, which levy must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state. The interstate commission shall promulgate a rule binding upon all compacting states which governs the assessment.

(3) The interstate commission shall not incur any obligations of any kind before securing the funds adequate to meet the obligations. The interstate commission may not pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(4) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE X
COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(1) Any state, as defined in Article II of this compact, is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five (35) of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis before adoption of the compact by all states and territories of the United States.

(3) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI
WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

Section A. Withdrawal

(1) Once effective, the compact shall continue in force and remain binding upon every compacting state; however, a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute that enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall notify immediately the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(4) The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt of the notification.

(5) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(6) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Default

(1) If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(a) Fines, fees and costs in such amounts as are deemed to be reasonable, as fixed by the interstate commission;

(b) Remedial training and technical assistance as directed by the interstate commission;

(c) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission: to the Governor, the Chief Justice or chief judicial officer of the state; the majority and minority leaders of the defaulting state's Legislature; and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension.

(2) Within sixty (60) days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state.

(5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial Enforcement

The interstate commission by majority vote of the members, may initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the compact, its duly promulgated rules and bylaws against any compacting state in default. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation, including reasonable attorney's fees.

Section D. Dissolution of Compact

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one (1) compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII
SEVERABILITY AND CONSTRUCTION

(1) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII
BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

(1) Nothing in this compact prevents the enforcement of any other law of a compacting state which is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over the meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective, and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency of that state to which the obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

SOURCES: Laws, 2004, ch. 457, § 1, eff from and after July 1, 2004.

Comparable Laws from other States — Alabama: Code of Ala. § 15-22-1.1.
Alaska: Alaska Stat. § 33.36.110.
Arizona: A.R.S. §§ 31-467 et seq.
Arkansas: A.C.A. §§ 12-51-101 et seq.
California: California Pen C § 11180.
Colorado: C.R.S. §§ 24-60-2801 et seq.
Connecticut: Conn. Gen. Stat. §§ 54-133 et seq.
Delaware: 11 Del. C. §§ 4358 et seq.

District of Columbia: D.C. Stat. § 24-133.
Florida: Fla. Stat. § 949.07.
Georgia: O.C.G.A. §§ 42-9-80 et seq.
Hawaii: H.R.S. §§ 353B-1 et seq.
Idaho: Idaho Code §§ 20-301 et seq.
Illinois: § 45 I.L.C.S. 170/1 et seq.
Indiana: Burns Ind. Code Ann. §§ 11-13-4.5-1 et seq.
Iowa: Iowa Code §§ 907B.1 et seq.
Kansas: K.S.A. §§ 22-4110 et seq.
Kentucky: K.R.S. §§ 439.561 et seq.
Louisiana: La. R.S. §§ 15:574.31 et seq.
Maine: 34-A M.R.S. §§ 9871 et seq.
Maryland: Md. CORRECTIONAL SERVICES Code Ann. §§ 6-201 et seq.
Massachusetts: ALM GL ch. 127, §§ 151A et seq.
Michigan: M.C.L.S. §§ 3.1011 et seq.
Minnesota: Minn. Stat. §§ 243.1605 et seq.
Missouri: §§ 589.500 et seq. R.S. Mo.
Montana: M.C.A. §§ 46-23-1101 et seq.
Nebraska: R.R.S. Neb. §§ 29-2639 et seq.
Nevada: Nev. Rev. Stat. Ann. §§ 213.215 et seq.
New Hampshire: R.S.A. §§ 651-A:26 et seq.
New Jersey: N.J. Stat. §§ 2A:168-26 et seq.
New Mexico: N.M. Stat. Ann. §§ 31-5-20 et seq.
New York: NY CLS Exec § 259-mm.
North Carolina: N.C. Gen. Stat. §§ 148-65.4 et seq.
North Dakota: N.D. Cent. Code §§ 12-65-01 et seq.
Ohio: ORC Ann. §§ 5149.21 et seq.
Oklahoma: 22 Okl. St. §§ 1091 et seq.
Oregon: O.R.S. §§ 144.600 et seq.
Pennsylvania: 61 Pa. C.S. § 7112.
Puerto Rico: 4 L.P.R.A. §§ 1433 et seq.
Rhode Island: R.I. Gen. Laws § 13-9.1-1.3.
South Carolina: S.C. Code Ann. §§ 24-21-1100 et seq.
South Dakota: S.D. Codified Laws §§ 24-16A-1 et seq.
Tennessee: Tenn. Code Ann. §§ 40-28-401 et seq.
Texas: Tex. Gov't Code §§ 510.001 et seq.
Utah: Utah Code Ann. §§ 77-28c-101 et seq.
Vermont: 28 V.S.A. §§ 1351 et seq.
Virginia: Va. Code Ann. §§ 53.1-176.1 et seq.
Virgin Islands: 5 V.I.C. §§ 4631 et seq.
Washington: Rev. Code Wash. §§ 9.94A.745 et seq.
West Virginia: W. Va. Code §§ 28-7-1 et seq.
Wisconsin: Wis. Stat. § 304.16.
Wyoming: Wyo. Stat. § 7-13-422 et seq.

§ 47-7-83. Supervision of offenders from participating states.

Pursuant to the Interstate Compact for Adult Offender Supervision, the Department of Corrections may assume the duties of supervision over offenders of any sending state who were convicted of misdemeanors. The Department of Corrections may not supervise offenders convicted of misdemeanors of states that are not participating in the compact.

SOURCES: Laws, 2004, ch. 457, § 2, eff from and after July 1, 2004.

Editor's Note — For a list of other Interstate Compact for Adult Offender Supervision signatory state provisions, see the Editor's note under § 47-7-81.

§ 47-7-85. Application fee for out-of-state transfer; funds received to defray compact expenses.

Pursuant to the Interstate Compact for Adult Offender Supervision, the Department of Corrections may charge a one-time application fee in the amount of Fifty Dollars ($50.00) to each offender applying for out-of-state transfer under the Interstate Compact for Adult Offender Supervision. Payments received under this section shall be deposited into a special fund which is created in the State Treasury. Monies in the fund shall be expended by the Department of Corrections, upon appropriation by the Legislature, to defray costs incurred by the department under the Interstate Compact for Adult Offender Supervision. Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the special fund shall be deposited to the credit of the special fund.

SOURCES: Laws, 2004, ch. 457, § 3; Laws, 2006, ch. 359, § 1, eff from and after passage (approved Mar. 13, 2006.)

MISSISSIPPI RE-ENTRY COUNCIL

SEC.
47-7-101. Mississippi Re-Entry Council; purpose; steering committee membership and duties.

§ 47-7-101. Mississippi Re-Entry Council; purpose; steering committee membership and duties.

(1) There is created the Mississippi Re-Entry Council. The purpose of the council is to create effective strategies to assist former inmates in their return to the general population, to reduce the recidivism rates of inmates, to increase public safety, and to reduce budgetary constraints presently created by prison-related costs. The Re-Entry Council shall be led by a steering committee.

(2) The Re-Entry Council Steering Committee shall be composed of the following twelve (12) members, who shall serve for two-year terms:

(a) A Mississippi United States Attorney, or a designee appointed by the Governor;

(b) The Commissioner of the Mississippi Department of Corrections, or a designee;

(c) The Attorney General of the State of Mississippi, or a designee;

(d) The director of a faith-based organization involved in re-entry programs, or a designee appointed by the Lieutenant Governor;

(e) The Chief Probation Officer of the United States District Courts of Mississippi, or a designee;

(f) A Mississippi United States District Judge, or a designee appointed by the Speaker of the House of Representatives;

(g) The Chief Justice of the Mississippi Supreme Court, or a designee;

(h) The Executive Director for the Mississippi Department of Mental Health, or a designee;

(i) The Executive Director for the Mississippi Division of Medicaid, or a designee;

(j) The Chairman of the Parole Board, or a designee;

(k) A person who is a former offender appointed by the Chairman of the Parole Board; and

(*l*) The Director of the Mississippi Department of Employment Security, or a designee.

(3) The Re-Entry Council Steering Committee shall have the following duties:

(a) To consider development of a statewide approach to assist re-entry of former inmates into the general population of this state;

(b) To provide recommendations regarding evidence-based approaches that equip inmates with the requisite, individualized resources to promote their successful return to the general population of this state;

(c) To review reports, studies, and materials as it deems appropriate;

(d) To appoint such subcommittees as it finds proper;

(e) To study proposed legislation that seeks to resolve recidivism;

(f) To submit recommendations from its findings to the Legislature, the Governor and the Mississippi Supreme Court. In making such recommendations, the Re-entry Council Steering Committee will seek input from all branches of state and local government, governmental agencies, businesses and nonprofit organizations throughout this state;

(g) To seek and receive grants;

(h) To hire contract personnel and/or staff using any grants received; and

(i) To collaborate with the coordinator of the transitional re-entry center, under the supervision of the Mississippi Department of Corrections, which shall provide administrative support to the council.

(4) The Chief Justice of the Mississippi Supreme Court shall call the first meeting of the steering committee. At its first meeting, the steering committee shall elect a chairman and vice chairman from its membership and adopt rules for transacting its business and keeping records. Officers shall serve one-year terms or until such time as a successor is elected.

SOURCES: Laws, 2015, ch. 424, § 1, eff from and after passage (approved Mar. 29, 2015.)

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Elevator inspector.
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Offense.
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Peace officer.
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Permanent residence.
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Permit.
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Pressure vessel.
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Prison system population.
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Registration duties.
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Responsible agency.
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School official.
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Secret data.
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Self-closing and self-latching device.
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Sell.
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Sending state.
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Sensitive data.
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Sliding-door pin lock.
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Sliding-door security bar.
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Source of radiation.
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State fire marshal.
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State inmate.
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State of emergency.
  Prison overcrowding, §47-5-703.
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Stun gun.
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Subversive group, §45-19-51.
Such event.
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